SUPREME COURT OF THE UNITED STATES.

No. ~~227.~~ 1087

CHARLES G. MILLER, PLAINTIFF IN ERROR,

vs.

JAMESON C. SHERRY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

GOVERNMENT PRINTING OFFICE.

595

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1 Pleas in the circuit court of the United States of America for the northern district of Illinois, before the Hon. Thomas Drummond, judge of the district court for the district aforesaid, and on Monday, the seventh day of July, in the year of our Lord one thousand eight hundred and sixty-two, and of the independence of the United States the eighty-seventh year.

WM. H. BRADLEY, *Clk.*

JAMESON C. SHERRY
v.
CHARLES G. MILLER. } Ejectment.

Be it remembered, that on the fifteenth day of February, in the year of our Lord one thousand eight hundred and sixty one, said plaintiff, by Helm & Clark, his attoneys, came and filed his declaration in ejectment, and notice thereto attached, and
2 proof of service, together with a bond for costs, all of which reads in the words and figures following, to wit:

Bond for costs.

UNITED STATES OF AMERICA,

Northern district of Illinois, ss:
Circuit court, December term, A. D. 1860.

JAMESON C. SHERRY
v.
CHARLES G. MILLER.

We enter ourselves security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court; and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by him, hereby agree and stipulate that execution may issue against our property for any costs taxed against him.

Dated this 15th day of February, A. D. 1861.

HELM & CLARK.

Endorsed: Filed Feb'y 15, 1861.

WM. H. BRADLEY, *Clerk.*

3 *Declaration, &c.*

Circuit court of the United States for the seventh circuit and northern district of Illinois, of the December term, A. D. 1860.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Jameson C. Sherry, who is a citizen of the State of New York, by Helm & Clark, attorneys, complains of Charles G. Miller, who is a citizen of the State of Illinois, in a plea of trespass and ejectment. For that, whereas, the said plaintiff, on the fifth day of February,

A. D. one thousand eight hundred and sixty-one, in said northern district of Illinois, was possessed of certain tract or parcel of land, with the appurtenances, situate in the county of La Salle, in the State and northern district of Illinois, and described as follows, to wit: Lots numbered eight, (8,) nine, (9,) thirteen, (13,) and fourteen, (14,) in block number seventy-nine, (79,) in the State's addition to the town, now city of Ottowa, in said county and State of Illinois, which said tract of land exceed in value the sum of five hundred dollars, and
4 which said premises the said said plaintiff claims in fee. And he, the said plaintiff, being so possessed thereof, the said defendant afterwards, to wit, on the same day and year last aforesaid, entered the said premises and ejected the said plaintiff therefrom, and from the time last aforesaid has unlawfully withheld, and does now unlawfully withhold, from the said plaintiff the possession thereof, to the damage of the said plaintiff of the sum of one thousand dollars, and therefore he brings suit, &c.

HELM & CLARK,
Attorneys for Plaintiff.

To Charles G. Miller:

You are hereby notified that the declaration, with a copy whereof you are now herewith served, and to which copy this notice is subjoined, will be filed in the circuit court of the United States for the northern district of Illinois, at the city of Chicago, in said district, on Monday, the eleventh day of February, A. D. 1861, and that upon filing the same, a rule will be entered requiring you to appear and plead to the said declaration within twenty days after the entry of such
5 rule, and that if you neglect to appear and plead, a judgment by default will be entered against you, and the plaintiff will recover possession of the premises specified in the said declaration.

Dated this fourth day of February, A. D. 1861.

Yours, &c.,

HELM & CLARK,
Attorneys for Plaintiff.

5 STATE OF ILLINOIS,
County of La Salle, ss:

C. C. Campbell, being duly sworn, says that on the 5th day of February inst., he served a copy of the foregoing declaration and notice upon Charles G. Miller, above named, at the city of Ottowa, by delivering the said copy to him, the said Charles G. Miller, who is personally known to me. And further says not.

C. C. CAMPBHLL, *Dep'ty Sheriff.*

Subscribed and sworn to before me this 5th of Feb'y, 1861.

A. B MOORE,
Cl'k Circuit Court, La Salle county.

Endorsed: Filed Feb'y 15, 1861.

WM. H. BRADLEY, *Cl'k.*

6 And afterwards, to wit, on the 15th day of February, A. D. 1861, in the record of the proceedings of said court in said cause is the following entry to wit:

JAMESON C. SHERRY, *v.* CHARLES G. MILLER. } Ejectment.

Now comes the plaintiff, by Messrs. Helm & Clark, his attorneys, who file his declaration in ejectment against the defendant, together with a notice thereto attached; and also, an affidavit of due service of a true copy of said declaration, and notice upon the defendant, and on motion of the plaintiff's attorney, it is ordered by the court that this cause be docketed, and that the defendant be hereby ruled to plead within twenty days, or that his default be entered.

And afterwards, to wit, on the 25th day of February, A. D. 1861, the said defendant, by his attorney, comes and files his plea in the words and figures following, to wit:

7 *Defendant's plea.*

UNITED STATES OF AMERICA,

Circuit court of the United States for the seventh circuit and northern district of Illinois:

In the circuit court of the United States for the northern district of Illinois, of the December term, A. D. 1860.

CHARLES G. MILLER, *v.* JAMESON C. SHERRY. }

And the said Charles G. Miller, by G. W. Roberts, his attorney, comes and defends the force and injury, when, &c., and says that he is "not guilty" of unlawfully withholding the premises claimed by the plaintiff as alleged in the declaration of plaintiff.

GEORGE W. ROBERTS, *Deft's Att'y.*

Endorsed: Filed Feb. 25, 1861.

WM. H. BRADLEY, *Cl'k.*

8 And afterwards, to wit, on the 18th day of April, A. D. 1861, in the record of the proceedings of said court in said cause is the following entry, to wit:

JAMESON C. SHERRY *v.* CHARLES G. MILLER. } Ejectment.

This cause having this day been called for trial, now comes the plaintiff, by Messrs. Helm & Clark, his attorneys, who move the court that a jury be called to try the issue joined upon the plea of the defendant, heretofore filed herein of the general issue.

It is thereupon considered by the court, that a jury come to try said issue; and thereupon come a jury of good and lawful men, to

wit: Nathan Langford, Leonard Howard, M. D. Merrill, B. T. Baldwin, William C. Stevens, Adeno Page, George D. Kellogg, P. H. Crosby, Joseph E. Wyne, William Irvin, Steven M. Harris, and A. C. Jackson, who were duly elected, tried, and sworn, well and truly, to try said issue, and after hearing the evidence the jury returned into court the following verdict, to wit: We, the jury, find the defendant guilty of unlawfully withholding from the pos-
9 session of the plaintiff the real estate and premises described in the plaintiff's declaration, to wit: "Certain tract or parcel of land, with the appurtenances, situate in the county of La Salle, in the State and northern district of Illinois, and described as follows, to wit, lots numbered eight, (8,) nine, (9,) thirteen, (13,) and fourteen, (14,) in block number seventy-nine, (79,) in the State's addition to the town, now city, of Ottowa, in said county and State of Illinois." We also find the estate established in the plaintiff in trial to be an estate in fee simple, and assess his damages at the sum of one cent.

It is thereupon considered and adjudged by the court, that the plaintiff have and recover of the defendant possession of the said described real estate and premises according to the force, form, and effect of his said recovery, and that he have a writ of possession therefor, and that he also have and recover of the defendant the said sum of one cent, his damages, so as aforesaid assessed, together with his costs by him about his suit in this behalf expended, amounting to the sum of thirty-three dollars and twenty-five cents, and that he have execution therefore,

10 And afterwards, to wit, on the 21st day of June, A. D. 1861, in the record of the proceedings of said court in said cause is the following entry, to wit:

JAMESON C. SHERRY
v. } Ejectment.
CHARLES G. MILLER.

Now comes the defendant by E. S. Smith, his attorney, and moves the court to set aside and vacate the judgment entered herein on the eighteenth day of April last, and for a new trial of the same under the statute; and it appearing to the court that all the taxed costs herein have been paid by the defendant, it is ordered, that said judgment be set aside and vacated, the cause re-instated upon the docket, and a new trial of the same awarded.

And afterwards, to wit, on the 13th day of June, A. D. 1862, in the record of the proceedings of said court in said cause is
11 the following entry, to wit:

JAMESON C. SHERRY
v. } Ejectment.
CHARLES G. MILLER.

Now come the parties, by their attorneys, and upon issue joined thereupon come a jury of good and lawful men, to wit: John Dixon,

John D. Carman, A. L. Porter, Lewis Harmell, E. J. Kilgour, Orville Slusser, James M. Whipple, George M. Carter, James G. Griffith, George Wolff & W. W. Carothers, and Thomas J. Rudd, who were duly elected, tried, and sworn, and after hearing the evidence and arguments of counsel the jury returned into court the following verdict, to wit: We, the jury, find the defendant guilty of unlawfully withholding from the possession of the plaintiff the real estate and premises described in his declaration, to wit: lots numbered eight, (8,) nine, (9,) thirteen, (13,) and fourteen, (14,) in block numbered seventy-nine, (79,) in the State's addition to the town, now city, of Ottowa, in the county of La Salle, and State and northern district of Illinois. We also find the estate established in the plaintiff on the trial to be an estate in fee simple, and we assess the damages of the plain-
12 tiff to the sum of one cent. And the defendant, by his attorney, moves the court for a new trial.

And afterwards, to wit, on the 7th day of July, A. D. 1862, in the record of the proceedings of said court in said cause is the following entry, to wit:

JAMESON C. SHERRY
v. } Ejectment.
CHARLES G. MILLER.

Now come the parties, by their attorneys, and call up the motion of the defendant heretofore entered by his attorney for a new trial of this cause, when the court overrules the same, and awards judgment upon the finding of the jury heretofore entered herein.

It is thereupon considered and adjudged by the court, that the plaintiff have and recover of the defendant possession of the said described real estate and premises according to the force, form, and effect of his said recovery, and that he have a writ of possession therefor, and that he also have and recover of the defendant the said sum of one cent, his damages, so as aforesaid assessed, together
13 with his costs by him about his suit in this behalf expended, amounting to the sum of thirty-three dollars and sixty cents, and that he have execution therefor.

14 And on the 13th day of June, A. D. 1862, on the trial of said cause, the defendant took and filed the following bills of exceptions, to wit:

Bill of exceptions.

United States circuit court for the northern district of Illinois.

JAMESON C. SHERRY
v. } Ejectment.
CHARLES G. MILLER.

Be it remembered, that on the trial of this suit at the July term of this court, in the year eighteen hundred and sixty-two, the said plaintiff, Jamison C. Sherry, to maintain the issue on his part offered, and gave in evidence to the jury the record and proceedin gs of the cir-

cuit court for the county of La Salle, wherein William H. Lyon and others were complainants, and Charles G. Miller and others were defendants, which record and proceedings are as follows.

15 STATE OF ILLINOIS,
La Salle county, ss:

Pleas before the honorable Madison E. Hollister, judge of the ninth judicial district of the State of Illinois, and the presiding judge of the La Salle county circuit court, at a term of said court commenced and held at the court-house in Ottawa, in said county and State, on the second Monday in the month of June, the same being the thirteenth day of June, in the year of our Lord one thousand eight hundred and fifty-nine, and of the independence of the United States of America the eighty-third. Present: The honorable Madison E. Hollister, presiding judge; John F. Nash, clerk; Washington Bushnell, State's attorney; Francis Warner, sheriff.

Be it remembered, that on the 15th day of February, A. D. 1839, a præcipe and affidavit was filed in the office of the clerk of the said court, which is in the words and figures following, to wit:

Circuit court of La Salle co.

WILLIAM H. LYON and WALTER W. LYON,
vs.
CHARLES G. MILLER, ROBERT S. WILLIAMS, WILLIAM C. RICHARDSON, ELIZA MILLER, and MARY JANE WILLIAMS. } In chancery.

Will the clerk issue summons in the above cause to La Salle county, and oblidge, &c.?

HELM & CLARK,
Plaintiff's Att'ys.

16 WILLIAM H. LYON & WARREN LYON,
vs.
CHARLES G. MILLER, ROBERT S. WILLIAMS, WILLIAM C. RICHARDSON, ELIZA MILLER, and MARY JANE WILLIAMS. } Circuit court of Lasalle co.

STATE OF ILLINOIS,
La Salle county, ss.

W. H. Bushnell, being duly sworn, says that he is agent for the plaintiffs in the above-entitled suit; that said plaintiffs are not residents of the State of Illinois, and further says, that as this affiant is informed and believes, the said defendants, Robert S. Williams and Mary Jane Williams, are not residents of the State of Illinois. And further says not.

WM. H. BUSHNELL.

Subscribed and sworn to before me this 15th day of February, 1839.
J. F. NASH, *Cl'k.*

Be it remembered, that on the 15th day of February, A. D. 1839, "a creditor's bill in chancery" was filed in the office of the clerk of said court, which is in the words and figures following, to wit:

Circuit court, La Salle county, State of Illinois.—In chancery.

William H. Lyon & Warren W. Lyon, who are copartners, under the firm, name, and style of William H. Lyon & Co., in the city of New York, bring this their bill against Charles G. Miller, Robert S. Williams, William C. Richardson, Eliza Miller, wife of the said Charles G. Miller, and Mary Jane Williams, wife of said Robert S. Williams, defendants, and thereupon your orators complain and say, that
17 heretofore, to wit, in the term of October, in the year of our Lord one thousand eight hundred and fifty-eight, in the circuit court of the United States for the northern district of Illinois, by the consideration and judgment of the said court, your orators recovered against Charles G. Miller, defendant in this suit, the sum of sixteen hundred and twenty-five dollars and thirty-eight cents, for the damage which they had sustained, as well by reason of the non-performance by the said defendant of certain promises and undertakings by him before that time made and entered into to your orators, as for the costs and charges of your orators by them about their suit in that behalf expended, which were adjudged to your orators in and by the said court, whereof the said Charles G. Miller was convicted, as by the record of the said judgment in the office of the clerk of said court, reference being thereto had, and to which, for greater certainty, your orators pray leave to refer, will more fully and at large appear. And your orators further show unto your honor, that the said judgment, so recovered in manner aforesaid, remaining in full force and effect, and the said sum of money damages aforesaid unpaid and unsatisfied, your orators, on or about the day of November, in the year of our Lord one thousand eight hundred and fifty-eight, for the purpose of obtaining satisfaction of the said judgment, sued and prosecuted out of the said court a writ of the people, called a fieri facias, directed to the marshal of the United States for the said northern district of Illinois, in which said defendant resided at the time of the issuing of said writ, by which said writ the said marshal was commanded that of the goods, chattels, lands, and tenements of Charles G. Miller, defendant in said writ, he cause to *to* be made the sum of sixteen hundred and twenty-five dollars and thirty-eight cents, which your orators, in the said circuit court of the United States, recovered
18 against the said defendant, Charles G. Miller, and that he should have the money at the clerk's office of said court at Chicago, in said district, to satisfy the judgment so recovered by your orators as aforesaid, and that he should have then and there that writ. And your orators further show unto your honor, that the said writ of fieri facias, before the delivery thereof to the said marshal of the said district aforesaid, was duly endorsed, and was afterwards, and on or about the day of November, in the year of our Lord one thousand eight hundred and fifty-eight, delivered to the

said marshal, to be executed in due form of law. And your orators further show unto your honor, that the said marshal of said district aforesaid, on the day of , in the year of our Lord one thousand eight hundred and fifty-nine, returned on the said writ, to him in that behalf directed and delivered as aforesaid, that he could find no property of the said defendant out of which to satisfy the said execution, and that he returned the same wholly unsatisfied, as by the said writ of fieri facias, and the directions and the return of the said marshal endorsed thereon as aforesaid, filed in the office of the clerk of the said circuit court of the United States on the day and year last mentioned, will more fully appear, and to which, or a copy thereof, your orators pray leave to refer. And your orators further show unto your honor, that the judgment still remains in full force and effect, not reversed or satisfied, or otherwise vacated, and that the said Charles G. Miller has not paid the same to your orators, but has hitherto wholly neglected and refused so to do. And your orators further show unto your honor, that there is now actually and equitably due to your orators, upon the aforesaid judgment, the sum of sixteen hundred and twenty-five dollars and thirty-eight cents, together with the interest thereon, from the sixth day of October, one thousand eight hundred and fifty-eight, over and above all claims of said
19 defendant by way of set-off or otherwise. And your orators further show unto your honor, that on or about the first day of June, and before that time, in the year of our Lord one thousand eight hundred and fifty-seven, the said defendant, Charles G. Miller, was engaged in the mercantile business at the Ottawa, in the district aforesaid, and that your orators are informed and believe, that in the course of the said mercantile business of the said defendant, Charles G. Miller, divers persons became indebted to him to a large amount, and that the said defendant, at the time of filing this your orators' bill of complaint, had debts due to him, and for which he holds divers securities and evidences to a large amount, and has divers goods, wares, and merchandise, and other articles of personal property which belong to him, or in which he is in some way or manner beneficially interested, and that he has equitable interests and things in action, of some nature or kind, which might and ought to be applied to the payment of your orators' said judgment against him, the said defendant, Charles G. Miller. And your orators also charge, that the said defendant, Charles G. Miller, is owner of, or in some way or manner beneficially interested in, some real estate in this or some other State, or some chattels, real of some name or kind, or some contract or agreement relating to real estate or the rents, issues, and profits of some real estate ; and also that the said defendant is owner of, or in some way beneficially interested in, the stocks of some company, incorporated or unincorporated, or in the profits of some company or copartnership; and also that he has in his possession, at the time of the filing of this your orators' bill of complaint, some money, in coin or bank bills, or that he has money deposited in some bank or elsewhere to his credit, or that he has money or securities for

the payment of money held by some other person, in trust or otherwise, for his benefit.

And if the said defendant, Charles G. Miller, has made any assignment or transfer of his property or effects, or any part thereof, your orators expressly charge that they believe such assignment or transfer is merely colorable, and made with a view of protecting the property or effects of said defendant, Charles G. Miller, so assign and placing the same beyond the reach of your orators' said judgment, and enabling the said defendant to control and enjoy the same and the avails thereof, or to hinder and delay your orators in the collection of their debts now in judgment as aforesaid, and that so it would appear if the said defendant, Charles G. Miller, would state and set forth when and to whom such transfer or assignment was made, and what was the amount in value of the property or effects so assigned or transferred, and what were the terms upon which such transfer or assignment was made, and what disposition has been made of the property or effects so assigned or transferred, and in whose possession the same now is, or what has been done with the avails thereof; and your orators claim a full and complete discovery of all such property, effects, and things in action, belonging to the said defendant, Charles G. Miller, and of all trusts whereby any property, debts, or effects are held for the use or benefit of the said defendant, and of every assignment or transfer which the said defendant has made of his property, debts, or other effects, and of the person or persons to whom such assignment or transfer has been made, the amount and value of the property, debts, or other effects so assigned or transferred, and the trusts and other conditions upon which such assignment or transfer was made, and all the facts and circumstances relating thereto, and particularly what is the situation of the property, debts or other effects assigned or transferred at the time of filing this your orators' bill of complaints. And your orators further show unto your honor, that they have reason to believe, and do believe, that the said defendant has property and other equitable interests, things in action, or effects of the value of more than five hundred dollars, exclusive of all prior first claims thereon, and which your orators have been unable to reach by execution on said judgment against the said defendant, and that this your orators' bill of complaint is not exhibited by collusion with the said defendant, or with any other person or for the purpose of protecting the property or effects of the said defendant against the claims of other creditors, but for the sole purpose of compelling payment and satisfaction of the judgment so as aforesaid recovered by your orators against the said defendant. And your orators further show unto your honor, that on or about the sixth day of April, of the year eighteen hundred and fifty-seven, the said defendant, Charles G. Miller, being then indebted to your orators in a large sum of money, and to divers other persons and parties, and being in great embarrassment on account thereof, and with interest to invest his assets and monies in property, and place the same beyond the reach of his creditors, did, for a sum of money, the amount of which is not known to your orators,

purchased of one Edward L. Lindlay a certain piece or parcel of land described and known as follows, to wit: Lot four (4) of block ninety-five (95) of State's addition to Ottawa, in the said county of La Salle, and did then cause the same to be conveyed by the said Lindlay to the said defendant, Eliza Miller, who is the wife of him, the said Charles G. Miller; and your orators charge that the said
22 real estate so purchased was purchased by and with the assets, monies, and effects of the said Charles G. Miller, and that since said time, divers improvements have been placed upon the said property, and that the same have been placed there by the said Miller, and with and out of his own proper means and assets, and that the same has already been greatly enhanced in value. And your orators further show unto your honor, that the said Charles G. Miller did, on the same day and year last aforesaid, convey to the said defendant, Robert S. Williams, who is a son-in-law of the said Charles G. Miller, certain lots or parcels of land known and described as lot, eight, (8,) nine, (9,) thirteen, (13,) and fourteen, (14,) of block seventy-nine, (79,) of State's addition to Ottawa, in the said county of La Salle; that it is pretended and claimed by the said Miller and said Williams that said lots were so conveyed for the sum of three thousand dollars. And your orators further show that said Charles G. Miller did, at the time of the said conveyance, and still continues to, occupy the said lots last described, and with his family resides thereon; and your orators charge that the said conveyance to the said Williams was made and pretended with a fraudulent intent to hinder, delay, and defraud the creditors of the said Charles G. Miller; and that the said property is yet held by the said Williams to and for the use of the said Charles G. Miller. And your orators further show unto your honor that upon, and previous to, the eleventh day of September, of the year eighteen hundred and fifty-seven, the said Charles G. Miller was, and had been, the owner of the following lands, in the county of La Salle, to wit: The northwest $\frac{1}{4}$ of the southwest $\frac{1}{4}$ of section seventeen (17,) township thirty-four (34,) range four (4,)
23 the southwest $\frac{1}{4}$ of the northwest $\frac{1}{4}$ of said section, the northeast $\frac{1}{4}$ of the northwest $\frac{1}{4}$ of said section, the north $\frac{1}{2}$ of the southeast $\frac{1}{4}$ of said section, the southwest $\frac{1}{4}$ of the northeast $\frac{1}{4}$ of said section, and the northeast $\frac{1}{4}$ of the southwest $\frac{1}{4}$ of said section; also a fractional part, being four acres, in the northwest $\frac{1}{4}$ of the southwest $\frac{1}{4}$ of the southeast $\frac{1}{4}$ of the said section, all in said county of La Salle, in all amounting to two hundred and eighty-four acres; that the said defendant, William C. Richardson, then held a mortgage upon the whole of said lands for the sum of ten thousand dollars, ($10,000;) that for the pretended consideration of the sum of twelve thousand two hundred dollars and twelve cents, ($12,200 12,) the said Charles G. Miller did, on the said 11th day of September, A. D. 1857, convey the whole of said lands to the said Robert S. Williams and Mary Jane Williams, wife of the said Robert S. Williams, and who is a daughter of said Charles G. Miller. And your orators further charge that the said mortgage, or some part thereof, was fraudulent, and that said sale to said Williams and his wife was fraudulent, and intended to keep said

property beyond the reach of the creditors of said Miller; and that since said time said Miller has fraudulently obtained a discharge as an insolvent debtor by the county court of the county of Cook, in said State; that said Miller and said Richardson, intending to defraud the creditors of said Miller, procured from the said court the appointment of said Richardson as the assignee of said Miller; that since said time said Miller has collected and used divers of the assets by him assigned to the said Richardson, and that the same was merely colorable, and not made in good faith. And your orators further show that
24 the said Miller has conveyed, or is about to convey, or have conveyed to the said Williams the said lot (4) four, of block (95) ninety-five, of State's addition to Ottawa; that it is pretended that said Williams has purchased the same at a sale of said lot upon and by virtue of a mortgage; but your orators charge that the monies for said purchase, or some part thereof, are to be furnished by said Miller. And your orators well hoped that the said defendant, Charles G. Miller, would have paid to your orators the amount due them on said judgment, or would have applied for that purpose any property, money, debts, or other equitable interests, or things in action, belonging to him, or in which he is in any way interested, as in equity and good conscience he ought to have done. But now so it is, may it please your honor, that the said defendants, Charles G. Miller, Eliza Miller, Robert S. Williams, Mary Jane Williams, and William C. Richardson, combining and confederating with divers other persons to your *to your* orators unknown, but whose names, when discovered, they pray may be inserted herein with proper and apt words to charge them, and contriving how to injure and defraud your orators in the premises, neglect or refuse to pay the amount so due to your orators in their said judgment, or to apply for that purpose any property, money, debts, or other equitable interests, or things in action, belonging to the said defendant, Charles G. Miller, and for reason whereof the said defendant set up a variety of unfounded pretence. All which actings, doings, neglects, and pretences are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orators in the premises. In tender consideration thereof, and forasmuch as your orators are remediless in the premises, at and by the direct and
25 strict rules of the common law, and cannot have adequate relief, save in a court of equity, where matters of this and a similar nature are properly cognizable and relievable: to the end, therefore, and that said defendants may, if they can, show why your orators should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information and belief, full, true, direct, and perfect answer make to all and singular the matters and things hereinbefore stated and charged, and particularly to such of the several interrogatories hereinafter numbered and set forth, as by the the note hereunder written they are required to answer, that is to say, the said defendant may fully set forth and discover, according to the best of their knowledge, remembrance, information and belief, the nature and situation, amount

and value of all the property, interest, and effects of the said defendant, Charles G. Miller, including all things in action, of whatever nature or kind, with the particulars relating thereto; and that they may answer and state whether, at the time of filing this your orators' bill of complaint, he, the said defendant, Charles G. Miller, had not debts due to him to a considerable amount, and if so, that they may state particularly the amount of such debts respectively, and from whom the same are due, and what securities are held therefor; and also that they may state which and what amount of said debts are good and collectable, and what amount bad, or doubtful, and whether, at the time of filing this your orators' bill of complaint, he has not some property, real or personal, in law or equity, belonging to
26 him, or held in trust for him, or in which he has not some beneficial interest of some kind or description, and if so, that they may state and set forth a full and particular account thereof, and the nature and value of his interest therein; and that they may also state whether he has not money of some kind in his or their possession, or under his control, or deposited to his credit, or for his use, or in some way or manner held for his use and benefit, and if so, that they may state and set forth particularly the amount thereof, and how, and by whom, the same is held; and that they may also state whether he has any other equitable interests or things in action, or other means belonging to him, or in which he is in any way interested, whereby he could pay any part of the amount so as aforesaid due to your orators upon their said judgment against him, the said defendant, Charles G. Miller; and if the said defendant last named has made any assignment or transfer of his property and effects, or any part thereof, that then the said defendants may state and set forth, each for himself or herself, jointly or separately, generally, but not in items, what property or effects have been so assigned or transferred, and the value thereof, and particularly when, and to whom, and for what purpose, and upon what terms and conditions such assignment or transfer was made, and what has been done under such assignment or transfer, and what has been done with the property or effects so assigned or transferred and the avails thereof; and that the said defendants may specially state and set forth, each for himself or herself, jointly or separately.

1. What was paid for the said property conveyed to said Eliza Miller, why the same was conveyed to her, with all the considerations,
27 reasons, and circumstances attending or pertaining to the same.

2. What was the consideration for the said mortgage held by the said Richardson; and the defendants will set forth, in items, particularly, what the same was given and held for, with all of the circumstances pertaining to the same.

3. What was the condition for the sale of the said lots to said Williams; in what manner was the same paid for; at what time, what amounts, and when, and in what manner was the contract for said sale made, with all of the circumstances attending the same.

4. What was the consideration for the said sale of the said lands mortgaged to said Richardson, made by said Miller to said Robert S.

and Mary Jane Williams; how much was, or has been, paid upon said sale; when, and in what manner.

5. Who is, and has been, in the receipt and enjoyment of the rents and profits of the said lands, and what rent, if any, does said Miller pay to said Williams for the use and occupation of the said house and lots where said Miller resides.

6. Was not the said Miller discharged as an insolvent debtor, by the county court of Cook county, and said Richardson appointed assignee, after the claim upon which said Miller was arrested had been settled; and if so, in what manner was said claim settled, and how secured.

28 And your orators pray that the said sales may be declared void, and that the said property, or some part thereof, may, by the decree of this court, be sold by a commissioner appointed for said purpose, and that your orators' said judgment may be paid out of the proceeds thereof. And that the said defendants, or some of them, may be decreed to pay your orators the amount so as aforesaid due to them for principal and interest on their said judgment, together with your orators' costs and charges in this behalf sustained, and may be decreed to apply for that purpose, any money or property, real or personal, in law or equity, debts, choses in action, or equitable interests belonging to said defendant, Charles G. Miller, or held in trust for him, or in which he is in any way or manner beneficially interested; and that the said defendants may be enjoined and restrained from selling, assigning, transferring, delivering, negotiating, discharging, receiving, collecting, incumbering, or in any way or manner disposing of or intermeddling with any debts or demands due to him, or any bills, bonds, notes, drafts, checks, book accounts, mortgages, judgments, or other debts due to him, whether in his possession or held by some other person in trust for him, or to his use or benefit; and also from assigning, transferring, or in any manner incumbering, or disposing of, or intermeddling with any money in coin, bank bills, drafts, or checks belonging to him, whether in his possession or held by any other person in trust for his use or benefit, or any stock or interest in any private or incorporated company, or any property, real or personal, things in action, or

29 chattels real held by him, or by any other person for him, or in which he has any interest whatever, except where such trust has been created by, or the fund so held in trust has proceeded from, some person other than the said defendant, Charles G. Miller.

And that the said defendants may also be in like manner prohibited from making any assignment of their property, and from confessing any judgment for the purpose of giving preference to any other creditor, over your orators, and from doing any other act to enable other creditors to obtain their property, and that a receiver may be appointed, according to the course of practice in this court, and with the usual powers of receivers in like cases of all the property, equitable interests, things in action, and effects of the said defendant, Charles G. Miller. And that your orators may have such further or such other relief in the premises as the nature of their case shall

require, and as shall be agreeable to equity and good conscience. May it please your honor to grant unto your orators the people's writ of injunction, issuing out of, and under the seal of, this honorable court, to be directed to the said defendant, Charles G. Miller, William C. Richardson and Robert S. Williams, and to their counsellors, attorneys, solicitors, trustees, and agents therein, and thereby commanding, and strictly enjoining the said defendant, and the persons before mentioned in manner aforesaid.

And may it please your honor to grant unto your orators the people's writ of subpœna, issuing out of, and under the seal of this honorable court, to be directed to the said defendant, Charles G. Miller,
Eliza Miller, Robert S. Williams, Mary Jane Williams, and
30 William C. Richardson, therein, and thereby commanding them, and each of them, on a certain day, and under a certain penalty to be therein inserted, that they personally be and appear before the judge of the honorable court, at the court-room in the city of ——, then and there to answer all and singular the premises, and to stand to, and abide by, and perform such order and decree therein as to your honor shall seem agreeable to equity and good conscience. And your orator will ever pray, &c.

WILLIAM H. LYON &
WARREN W. LYON,
By H. L. HELM,
Their Att'y in fact.
HELM & CLARK, *Solicitors.*

STATE OF ILLINOIS,
Cook county, ss:

On this tenth day of February, one thousand eight hundred and fifty-nine, personally came before me, Philip A. Hoyne, a notary public in said county, William H. Bushnell, and being sworn, says, that the matters set forth in the foregoing bill of complaint are true in substance and in fact.

W. H. BUSHNELL.

Subscribed and sworn to before me this 10th February, 1859.
[SEAL.] P. A. HOYNE, *Not. Pub.*

Be it remembered, that on the 15th day of February, A. D. 1859, a summons in chancery was issued out of the circuit court of said county, which is in the words and figures following, to wit:

31 STATE OF ILLINOIS,
La Salle County, ct.:

The people of the State of Illinois to the sheriff of La Salle county, greeting:

We command you to summon Charles G. Miller, Robert S. Williams, William C. Richardson, Eliza Miller, and Mary Ann Williams, if to be found in your county, personally to be and appear before the

circuit court of said county, on the first day of the next term thereof, to be holden at the court-house in Ottawa, on the second Monday in the month of June next, to answer to a certain bill of complaint, filed in our said circuit court on the chancery side thereof, against them, by William H. Lyon and Warren W. Lyon; and have you then and there this writ, and make return thereon in what manner you execute the same.

Witness John F. Nash, clerk of said court, and the seal of said court at Ottawa, this 15 day of February, A. D. 1859.

[SEAL.] J. F. NASH, *Clerk.*

Said summons was returned by sheriff, and endorsed in the words and figures following, to wit:

"William H. Lyon and Warren W. Lyon *vs.* Charles G. Miller, Eliza Miller, William C. Richardson, and others. In chancery.

"Served this summons by reading the same to Robert S. Williams, and delivering a true copy of the *same* to *him*, April 1st, 1859.

32 "F. WARNER, *Sh'ff.*

"Served by reading to the within-named Charles G. Miller, and delivering to him a true copy of this writ, Feb. 21, 1859.

"F. WARNER, *Sh'ff*,
"Per W. B. HALL, *Dp'y.*

"Served this summons by reading and delivering a true copy thereof to each of the within-named, Eliza Miller and William C. Richardson, on 25th March, 1859, Mary Ann Williams not being found in my county.

"F. WARNER, *Sh'ff*,
"Per G. W. FOX, *D'ty.*

"Serv. and r't	$1 60
3 copys	1 50
3 miles	15
	3 25
On will	1 05
	4 30

"Filed June 8, 1859.

"J. F. NASH, *Clerk.*"

Be it remembered, that on the 9th day of November, 1859, the same being one of the days of the November term of the circuit court for said year, an order was entered of record in the word and figures following, to wit:

WILLIAM H. LYON and WARREN W. LYON
vs.
CHARLES G. MILLER, ROBERT S. WILLIAMS, WM. C. RICHARDSON, ELIZA MILLER, and MARY JANE WILLIAMS. } In chancery.

33 On motion of complainants, by their solicitors, Helm & Clark, it is ordered by the court that the defendant, Miller, file his answer herein on or before Monday morning next.

Be it remembered, that on the 14th day of November, 1859, the answer of C. G. Miller, one of the defendants, was filed by the clerk of the said court, which is in the words and figures following, to wit,

Circuit court, La Salle county, State of Illinois.—Sitting in chancery.

The several answers of C. G. Miller, one of the defendants in the bill of complaint of William H. Lyon and Walters W. Lyon, citizens of the city and State of New York, complains against him, and Robert S. Williams, and William C. Richardson, Eliza Miller and Mary Jane Williams: this defendant, now and all times hereafter, saving to himself all and all manner of benefit, or advantage of exception, or otherwise that can or may be had or taken to the many errors, uncertainties, and insuffiencies in the bill contained for answer thereto, or to so much thereof as this defendant is advised, it is material or necessary for him to make answer thereto, with answering, says: That of his own knowledge he knows of the rendition of judgment in favor of said complainants against this defendant, and this issuing of an execution thereon; and this defendant believes the facts in regard to said several matters heretofore mentioned, as set forth in said bill of complaint. And this defendant, further
34 answering, says, that on the sixth day of April, 1857, he did purchase of one Edward S. Lindley, lot five in block 95, in State's addition to the city of Ottawa; the circumstances and particulars will more fully appear in answer to interrogatory No. one. This defendant would further state, that at the time of the purchase of said lot, he was indebted to the said William H. Lyon and Warren W. Lyon in the sum of five hundred and eighty-six dollars and ninety-four cents, but was not all embarrassed by the same, as charged in said bill of complaint; and this defendant would further state that he did, on the sixth day of April, 1859, sell and convey to the said Robert S. Williams lots 8, 9, 13, and 14, in block 79, in State's addition to Ottawa, as charged in said bill of complaint, and the circumstances and particulars of said sale will more fully appear in answer to interrogatory No. 3. And this defendant would further show, that on the 11th day of September, 1857, he did convey to Robert S. Williams the northwest quarter of the southwest quarter of section seventeen, also the southwest of the north $\frac{1}{4}$ of said section, also the northeast $\frac{1}{4}$ of the northwest quarter of said section, also the north half of the southeast quarter of said section, also the southwest $\frac{1}{4}$ of the northeast $\frac{1}{4}$ of said section, and the northeast $\frac{1}{4}$ of the southwest quarter of said section; also a fractional part, being

four acres in the northwest quarter of the southwest quarter of the southeast quarter of the said section, all in the county of La Salle, and State of Illinois, containing two hundred and eighty-four acres; and the said William C. Richardson then held a mortgage on
35 the said land, and also Milton H. Swift, and also the school commissioners of La Salle county, all of which will be more fully set forth, together with all the circumstances attending said sale, in this defendant's answer to interrogatory No. four And this defendant now states, in the sale of lands to Robert S. Williams was not done defraud creditors, nor for the purpose of placing said lands or lots beyond the reach of this defendant's creditors, but will be more fully explained in answer to interrogatory No. four. And this defendant would further state, as charged in said bill of complaint, that in June, 1858, he was discharged as an insolvent debtor by the county court of Cook county, but not fraudulently, as charged in said bill of complaint, and that William C. Richardson was appointed by said court assignee, with the consent and concurrence of the attorney in this suit. All the circumstances attending the same will be fully explained and answered in this defendant's answer to interrogatory No. six in the said bill of complaint. And this defendant would further state that he never caused to be conveyed to Robert S. Williams lot four in block ninety-five in State's addition to Ottawa, but that the said Williams became the purchaser of the same when sold under mortgage. And this defendant would further state he furnished no part of said purchase-money. All the particulars and circumstances will be more fully answered by this defendant in his answer to interrogatory No. one of the plaintiff's bill of complaint. And this defendant, in answer to said bill of complaint, would state that he has not been guilty of collusion or fraud, but that all his acts with William C. Richardson and Robert S. Williams and all others in regard to the sale of lands, and lots, and goods,
36 has been honorable and straightforward, as will be fully answered and explained by this defendant's answer to the several interrogatories contained in said bill of complaint. And this defendant would claim that he be not held responsible for any informality in this his answer to said complainant's bill of complaint, being unable to pay counsel to prepare the same.

Interrogatory No. one. What was paid for said property conveyed to Eliza Miller? and why was the same conveyed to her with all the conditions, reasons, and circumstances attending or appertaining to to the same?

Answer No. 1. The consideration for said property was estimated at fourteen hundred dollars; eight hundred dollars of which sum was another property, which was owned by her and traded for a mortgage against Edward S. Lindley, and against this same property, which her own property and purchased with her own means, and a mortgage of four hundred and forty dollars, which was also purchased with means of her own, and for these reasons it was conveyed hy tbe said Edward S. Lindley to her, it being the only property she held in her own name, and the only property she had for her share

of her father's estate. She mortgaged said property to Mr. Woodruff, of Chicago, in June, 1858, and before the commencement of this suit or before William H. Lyon & Warren W. Lyon commenced any proceedings against this defendant, and the same was sold under said mortgage by Mr. Woodruff, and Robert S. William became
37 the purchaser through William C. Richardson. I paid no part of said money. Robert S. William paid every cent of his own money for said lot, and it is now held by him by virtue of said sale. That I receive no rents nor profits for the same, and is in no way held for me in trust or otherwise.

No. 2. What was the consideration for the said mortgage to Richardson and defendant? Set forth, in items, particularly, what the same was given for and held for, with all the circumstances pertaining to the same.

Answer No. 2. The defendant would answer that it is out of his power to state definitely as to the several am'ts that composed, at the time, my indebtedness and liabilities to the said William C. Richardson, but will have to do so from memory. I was indebted to William C. Richardson in the following am'ts, as near as I can recollect: $2,500 bal. due him on stock of goods, and also a note of $500 not due at the time; he was my endorser to the following amt's: to the City Bank of Eames, Allen & Co. to the am't of five thousand dollars, on which there was interest due to the am't of nearly two hundred dollars; he was my endorser of a note to Joseph Cookson for the am't of twenty-one hundred and sixty dollars and the interest thereon; he was endorser to Beebee, Richardson & Co., of Boston, in the am't of $2,394, and the interest thereon; to Strong, Adriance & Co., of New York, for $800 and interest; to William Bayer, $500 and interest; to Calvin Lowell, the am't of 750 dollars and interest, and sundry small am'ts not now recollected. On the fifth day of August,
1857, I sold him my stock of goods, which amounted to the
38 sum of $8,796 04, for which he was to assume my liabilities in bank and my individual indebtedness to him as far as the went, and, in consideration of his heavy liabilities, I gave him a mortgage of $10,000, and he was to extend his endorsement one or two thousand more. And when he ascertained that this conveyance to him was made subject to other mortgages to the am't of over five thousand dollars, he refused to extend his liabilities any further. We then figured up the am't of his liabilities over and above the am't of the goods, which was $6,500, and the balance being credited on said mortgage, reducing the am't from ten thousand to $6,500, the then actual am't of said liabilities; the whole of which transaction was in good faith, and solely to secure the said William C. Richardson, and not with the least intention whatever of defrauding the creditors of this defendant, as charged in said bill of complaint; this defendant having borrowed all the money he could on his real estate to sustain himself in business, and every transaction with Mr. Richardson was honorable and just.

Interrogatory No. 3. What was the consideration for the sale of said lots to said Williams? In what manner was the same paid for?

at what time, what amounts, and where, and in what manner was the contract for said sale made, with all of the circumstances attending the same?

Answer No. 3. On the sixth day of April, 1857, I sold Robert S. Williams lots No. 8, 9, 13, and 14, in State's addition to Ottawa, for the am't of $2,500 dollars, subject to a mortgage, to Mr. Joycox for $1,125, given in June, 1856, (I think,) for which he gave me
39 two acceptances on New York, payable, I think, in six and 8 months, which I gave to Sacket, Belchor & Co., in New York, when said acceptance were returned to me by Sacket, Belchor & Co. for further securities. I gave him Mr. L. P. Sanger as an endorser on one note, and General Jacob Fry, of Ottawa, on the other, and Mr. Williams then gave me his two notes, payable in three and four years, for the am't, with the understanding that he was to pay as fast as he could before their maturity, on which he paid as follows: a judgment of eight hundred dollars and costs; he also paid me a draft of four hundred and ten dollars on Swift, Johnson & Co., and when I collected it I endorsed the same on his note; also one draft, made payable to Wm. C. Richardson, for $350, and by him endorsed for me; also one to Eames, Allen & Co., for $158; and also one to Wells Wait for $50; the date these several d'fts is not recollected, but endorsements on said notes and Mr. Williams's answer will show dates and will show when paid. I bargained with the said Robert S. Williams on my return from New York in the spring of 1857, and I sold the said house and lot to Robert S. Williams for the sake of making satisfactory arrangements with Sacket, Belchor & Co., who were the only house in New York who were urging me to pay. This defendant was very little indebted to any one in the city of New York, except to Sacket, Belchor & Co., and had just purchased a large stock of goods on an indisputable credit in New York. And this defendant would further state, that said sale was made in good faith and for a valuable consideration, and not for the purpose of defrauding the creditors of this defendant, as charged in said bill of complaint. And
40 this defendant would further state, that all the several encumbrances on real estate were made solely to sustain the credit of this defendant, and that the charges in said bill of complaint that this defendant did put his property into the hands of thers to withhold the same from the creditors of this defendant, and are not true in fact.

Interrogative No. 4. What was the consideration for the said sale of the said lands mortgaged to Richardson, made by you to Robert S. Williams was or had been paid upon said sale? When, in what manner?

Answer to interrogatory No. 4. The consideration in said deed to Robert S. Williams & Mary Jane Williams was made, subject to a mortgage, to Milton H. Swift, or to John Heuston, and by him sold to Milton H. Swift, dated April 1st, 1854, for eleven hundred dollars, with ten per cent. interest; also one to the school commissioners of La Salle, dated Oct. 22, '52, for five hundred dollars, with ten per cent. interest; also a mortgage to Charles Paver for the sum of eighteen hundred dollars, dated January 1st, 1857, and payable one year after date, with interest; also one mortgage for the sum sixteen hundred

dollars with interest at ten per cent., dated April, 1857, and payable one year after date; also a mortgage to William C. Richardson for six thousand five hundred dollars; amounting in all, $11,525 00, which said encumbrances were made the consideration of said sale; the interest due on said mortgage, together with the 11,525 00, was the full am't of said sale, and all of said encumbrances were just and right, and for an actual valuable consideration this defendant
41 did thus sell to the said Williams the lands named in said complainant's bill of complaint, with the encumbrances fully the value of the said lands, thinking if the said Williams could pay off all these several encumbrances he might do so and keep the lands, for, if sold under any of these encumbrances, they would not bring near as much as they had already been encumbered with. And this defendant placed said deed on record; and when the said Williams informed this defendant he was unable to meet those several heavy liabilities, this defendant had no other alternative but to let the creditors of this defendant have said lands; and this defendant is at a loss to know there could possibly be the least semblance of fraud in the sale of these lands where encumbranced for their full value, and the creditors had the benefit of the whole of it.

Interrogatory No. 5. Who has been, and is, in the receipt and enjoyment of the rents and profits of the said lands? and what rent, if any, does the said Miller pay said Williams for the use and occupancy of the said house and lots where said Miller resides?

Answer to interrogatory No. 5. Richardson receives the rents, profits, and enjoyments of said, lands and has for two years received hardly enough to pay taxes, and this defendant has received no part of said rents nor profits from the same since the sale of said lands. And this defendant further states, that he has not been on said farm but once since the mortgage sale to Richardson, and knows nothing of or about the future rents, occupancy, or profits of said lands, nor any of the arrangements with tennants on the part of Richardson. Ro-
42 bert S. Williams receives the rent from me for the house I occupy, and paid rent is at the rate of one hundred and seventy-five dollars per year, deducting therefrom all the taxes which are levied on said lots for the city, State, and county, which said rents have been thus paid to Robert S. Williams.

Interrogatory No. 6. Was not the said Miller discharged, as an insolvent debtor, by the county court of Cook county, and said Richardson appointed assignee, after the claim for which Miller was arrested had been settled? And if so, in what manner was said claim settled, and how secured?

Answer to interrogatory No. 6. This defendant would answer that he was discharged, as an insolvent debtor, by the county court of Cook *Cook*, in June, 1858; and this defendant, in his answer to the interrogatory, would here fully state the whole matter concerning the arrest and discharge of this defendant, sometime in the latter part of May or the first few days in June, 1858. This deponent was arrested on a ca. sa. in the city of Chicago, by Mr. Woodruff, of the firm of Woodruff and Seymour, in which Mr. Helm was attorney, the same person

who is attorney and drew the bill of complaint to which this an answer. I gave bail for my appearance before the court. I think on the second day of June, 1858, I appeared in court, and the examination was continued through most of the day, and was then postponed to a subsequent day, and on the day before my second appearance, Mr. Woodruff came to Ottawa, and through the solicitation of Mr.
43 Richardson, and the anxiety of my wife, they settled with Mr. Woodruff, my wife giving her property as security, and Mr. Richardson endorsed the notes as additional security. The property given was lot fou. in block 95, in State's addition to Ottawa. The next day the defendant appeared *appeared* before the court—Mr. Helm as attorney for Mr. Woodruff—and continued to prosecute said suit as thorgh no arrangements had been made in the matter; and he being fully advised of the fact, and court continued to hear the case until I was discharged by said court, and Mr. Richardson appointed by said court as receiver, with the full consent and approbation of the counsel of Mr. Woodruff. This defendant would further state, that he was honorably discharged by said court, and was so advised by his counsel and Mr. Helm, attorney in the complainant's bill of complaint, to which this is an answer. And this defendant would further state, that if said discharge by said court was illegal, it was done by Mr. Helm and my counsel, and not by this defendant. This defendant would further state, if said discharge was illegal, then Mr. Helm is responsible for the deception, and not this defendant, for said court, in granting a discharge to this defendant, acted in good faith and with much sympathy and kindness to this defendant, and granted this defendant an honorable discharge under the laws of the State of Illinois. Thus this defendant has fully answered said interrogatories.

Said orator prays that a part of said sales should be set aside by this honorable court, and some part of the property sold, or so
44 much of it as will satisfy and pay said orator's debt, this defendant would be permitted to state all the encumbrances on said land, together with sales of all or any part thereof, was made justly and honorably to sustain the defendant in his business, and for the best interests of said defendant's creditors. This defendant would further state, that he has no interest whatever to any or in any portion of the above conveyed property, or any that are named in said bill of complaint, nor has he any immunities, rents, or profits in or to any portion thereof, neither is there any portion thereof held in trust for me in any manner whatever, and therefore pray the honorable to respect the rights of the legal holders of said property. This defendant would further state, that he is too poor to employ counsel to draw an answer to said bill of complaint, and would hope, as the defendant was compelled to answer the same himself, that he would not be held responsible for errors or for want of form, as the statement in said answer may be wanting in form, but true in facts.

C. G. MILLER.

Sworn and subscribed to before me this 12th day of November, 1859.

GEO. H. WALKER, *J. P.*

Be it remembered, that on the 18th day of November, A. D. 1839, a replication to the answer of C. G. Miller was filed in said court, which is in the words and figures following, to wit:

In the circuit court of La Salle county, State of Illinois, November term, A. D. 1839.—In chancery.

The replication of William H. Lyon and Warren W. Lyon, complainants, to the separate answer of Charles G. Miller, one of the defendants.

These repliants, saving and reserving to themselves all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendant, for replication thereunto, say, that they do and will aver, maintain, and prove their said bill to be true, certain, and sufficient in the laws to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in the laws to be replied unto by these repliants, without this, that *that* any other matter or thing in the said answer contained, material or effectual, in the laws to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things these repliants are ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

HELM & CLARK,
Sol's for Compl'ts.

45 Be it remembered, that on the 18th day of November, 1859, the same being one of the days of the November term of said court for said year, an order was entered of record, which is in the words and figures following, to wit:

WILLIAM H. LYON and WARREN W. LYON
vs.
CHARLES G. MILLER, ROBERT S. WILLIAMS, WILLIAM C. RICHARDSON, ELIZA MILLER, and MARY JANE WILLIAMS. } In chancery.

This day the complaintiffs come, by Helm & Clark, their solicitors, and on their motion it is ordered that they have leave to file a replication to the answer of defendant, Charles Miller, and on their further motion the defendants, Robert S. Williams and Mary Jane Williams are ruled to file their answers herein on or before Wednesday morning next.

Be it remembered, that on the 26th day of November, A. D. 1839, the answer of William C. Richardson was filed in said court, which is in the words and figures following, to wit:

STATE OF ILLINOIS,
La Salle County ss:

In the circuit court thereof in chancery sitting.

The several answer of William C. Richardson, one of the defendants to the bill of complaint of William H. Lyons and Warren W. Lyons, co-partners, under the firm-name and style of William H. Lyon & Co., in the city of New York, complainants, against him and Charles
46 *G. Miller, Robert S. Williams, William C. Richardson, Eliza Miller, and Mary Jane Williamson.*

This defendant now, and at all times hereafter, reserving to himself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for him to make answer thereto, answering, saith: That of his own knowledge he knows nothing of the rendition of judgment in favor of said complainants against said Charles G. Miller, nor of the issuing of execution thereon, nor of the return made by the marshal in such process, nor of what amount is due to said complainants against said Miller on this said judgment; but this defendant is informed and believes that the facts in regard to said several matters heretofore mentioned are as set forth in said bill of comp'aints. And this defendant, further answering, says, that on the fifth day of August, A. D. 1857, he did buy of said Miller his stock of goods, the invoice of which amounted to ten thousand nine hundred and ninety-five dollars and six cents, and paid for the same, as will hereafter be shown; but as to the notes and accounts of said Miller, this defendant never was the owner or holder of them, nor either of them, and never had anything to do with them whatever, or any of the notes or accounts of said Miller. And this defendant, wishing to show to the hon. court all his transactions with the said Miller, wishes here to state all about his purchase of said goods, and all matters connected therewith. And this defendant says, that the sale of the said stock of goods was made in good faith, and did transfer the interest of said Miller thereto to this defendant, and said sale was not
47 made by collission between this defendant and said Miller, and that there was an adequate and valuable consideration for said sale from this defendant to said Miller, and this defendant admits that said Miller, at the time of said sale, was greatly in debt and much embarrassed in his business, but defendant was informed by said Miller, and verily believes from the statement of said Miller, and from the facts in his own knowledge, that the real estate and said stock of goods, and his notes and accounts of the same proved, collectable, or anything near thereto, making due allowance for such bad debts as would ordinarily be made by a purchaser of ordinary prudence, would be sufficient to pay his debts. And this defendant wholly denies that in any transaction with the said Miller, he was in any way party to defraud the creditors of the said Miller, or is

fraudulent and void. And this defendant denies wholly and most emphatically that he has property and effects in his possession, or under his control, belonging to the said Miller, or in which said Miller is interested, which ought to be applied in equity to the satisfaction of the judgment of said complainants. And this defendant, further answering, says, that on the fourteenth day of May, A. D. 1857, the said Charles G. Miller executed a mortgage or trust deed for ten thousand dollars on the NW. ¼ of the SW. ¼ of sec. 17, T. 34 N., R. 4 E., 3rd p. marid., on SW. ¼ of NW. ¼ of same section, and on the NE. ¼ of SW. ¼ of the same section, and on the SE. ¼ of NW. ¼ of the same section, and on the SW. ¼ of NE. ¼ of the same section, and on the NE. ¼ of SE. ¼ of the same section, and on a fraction of the SE. ¼ of SW. ¼ of the same section, which said deed or mortgage is acknowledged and recorded in the office of the recorder in the county of La Salle and State of Illinois, in book No. 53, pages 754 and 755, to which this
48 defendant asks leave to refer if necessary, and that it is a part of this answer; the considerations for said deed was partly for what the said Miller did then owe this defendant individually, and partly for what this defendant was liable for said Miller as indorser, or might thereafter become liable in any way. After examining said record this defendant ascertained that the said real estate was heavily encumbered by mortgages given by said Miller previously, as follows: Two to Charles Parkes, for about the sum of thirty-six hundred dollars; one to Milton H. Swift, for about thirteen hundred dollars; and one to the school commissioners of La Salle co. for about five hundred dollars; with these *these* incumbrances the said real estate would not have sold for near as much as would have satisfied these mortgages, and paid what this defendant was liable for to Eames, Allen & Co., and others, as endorser for said Miller. Besides this, said Miller was indebted to this defendant in many thousand dollars, a large item of which was the stock of goods which said Miller bought of me in November, 1855, amounting to twenty-five hundred dollars. In this situation of matters a sale of the said real estate was unavoidable in order to meet the paper which was falling due, upon which this defendant was indorser to a very large amount. The said Miller, after allowing all that was ever paid by him to this defendant in any way, was indebted to this defendant to the amount of four thousand two hundred and sixty dollars, besides other liabilities still unpaid, which this defendant had incurred as indorser as aforesaid, for which this defendant held the said mortgage deed. In default of payment the above amount of money this defendant did, on the 23rd day of July, 1858, sell the real estate above described, according to the
49 tenor of the mortgage to Elias Richardson, of La Salle county, and executed to said Richardson a deed, dated July 23rd, 1858, and recorded in book No. 61, pages 183, 184, 185, 186, and 187. And the defendant would here state that he never had anything to do in any way with the said Miller's property, real estate or personal, or notes, or accounts, except as is herein stated. And this defendant wholly denies that said mortgage, or any part thereof, was fraudulent.

And this defendant would further state that he knows nothing whatever about the purchase of said lot from said Lindly by said Miller, or why, or how, said lot was conveyed to said Eliza Miller. And this defendant would further state that about the sale of said lots No. 8, 9, 13, and 14, sold to Robert S. Williams, as charged in said complainant's said bill of complaint, this defendant knows nothing whatever. And this defendant would further state that about the consideration for the sale of said real estate which was mortgaged to this defendant, to said Robert S. and Mary Jane Williams, or how much was, or has been, paid on said sale, this defendant knows nothing whatever; neither does this defendant know anything about the sale of any other real estate by the said Miller in any manner whatever, except so far as the same appears on record. And this defendant would further state, that he rented the said real estate which was mortgaged to this defendant as aforesaid, for one-third of the crops; that he raised enough of wheat and oats to pay the taxes on said real estate, and leave about thirty dollars remaining, and that the corn crop is nearly destroyed by the frost, so that from it he shall realize but little; and about the rent of the house and lots where said Miller resides this defendant knows nothing whatever. And this defendant would further state that he has not now, nor never had, any property of the
50 said Miller, or any securities whatever, except as stated herein; and that the said property, as charged in your complainant's bill of complaint, or any part thereof, is held in trust for the said Miller by this defendant is positively denied; and as to the rents and profits and proceeds of the same, this defendant knows nothing more than is herein stated. And this defendant further states that in all his transactions with the said Miller he is not guilty of any collusion or fraud whatever; being involved with said Miller to a very large amount, it was but an act of justice on his part, and on mine a matter of self-preservation, that I should hold the said securities.

And this defendant denies all and all manner of unlawful combination and confederacy, wherewith he is by the said bill charged, without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge and belief of this defendant. All which matters and things this defendant is ready and willing to aver, maintain, and as this hon. court shall direct; and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

W. C. RICHARDSON.

STATE OF ILLINOIS,
La Salle County, ss :

William C. Richardson, being first duly sworn, says, that the several matters set forth in the foregoing answer are true in substance and in form as therein set forth, as he verily believes.

W. C. RICHARDSON.

51 Subscribed and sworn to before me this 26th day of November, A. D. 1859.

J. F. NASH, *Clerk*.

Be it remembered, that a replication to the answer of Wm. C. Richardson appears among the papers on file in said court, which is in the words and figures following, to wit:

In the circuit court, La Salle county, State of Illinois, November term, A. D. 1859.—In chancery.

The replication of William H. Lyons and Warren W. Lyon, complainants, to the answer of William C. Richardson.

These repliants, saving and reserving to themselves all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendant for replication thereunto, saith that they do and will aver, maintain, and prove their said bill to be true, certain, and sufficient in the laws to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in the laws, to be replied unto by these repliants, without this, that *that* any other matter or thing in the said answer contained, material or effectual in the laws to be replied unto, and not
52 herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true. All which matters and things these repliants are ready to aver, maintain and prove, as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

HELM & CLARK,
Solicitors for Complainants.

Be it remembered, that on the 26th day of November, 1859, the same being one of the days of the November term of said court, for said year, an order was entered of record in the words and figures following, to wit:

WILLIAM H. LYON and WARREN W. LYON
vs.
CHARLES G. MILLER, ROBERT S. WILLIAMS, WILLIAM C. RICHARDSON, ELIZA MILLER, and MARY JANE WILLIAMS. } In chancery.

On motion of the complainants, by Helm & Clark their solicitors, the defendant, Eliza Miller, is ruled to answer instanter. The defendants, Eliza Miller, Robert S. William and Mary Jane Williams, being each three times solemnly called in open court came not, nor any one for them, but make default. Whereupon, on motion of said solicitors, it is ordered by the court, that the bill herein be taken pro confesso against said defaulted defendants for want of answers, and that this cause be referred to the master in chancery to take
53 the proofs in this case, and report the same to this court.

643

Be it remembered, that on the 1st day of December, 1859, the same being one of the days of the November term of said court, for said year, an order was entered of record, which is in the words and figures following, to wit:

WILLIAM H. LYON and WARREN W. LYON
vs.
CHARLES G. MILLER, ROBERT S. WILLIAMS, WILLIAM C. RICHARDSON, ELIZA MILLER, and MARY JANE WILLIAMS. } In chancery.

On motion of the defendant, Robert S. Williams, by O. C. Gray, his solicitor, it is ordered by the court that the default as to him, and the order referring the case to the master in chancery, be set aside, and that said defendant have leave to file his answer to complainants' bill.

Be it remembered, that on the 1st day of December, A. D. 1859, the answer of Robert S. Williams was filed by the clerk of said court, which is in the words and figures following, to wit:

54 STATE OF ILLINOIS,
La Salle County, ss:

In the circuit court thereof in chancery sittings.

The several answers of Robert S. Williams, one of the defendants, to the bill of complaint of William H. Lyon and Warren W. Lyon, copartners under the firm-name and style of William H. Lyon & Co., who live in the city of New York, complainants, against Charles G. Miller, Robert S. William, William C. Richardson, Eliza Miller, and Mary Jane Williams. This defendant, now and at all times hereafter, saving to himself all and all manner of benefit, or advantage of exception, or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for him to make answer thereto, answering, saith: That of his own knowledge he knows nothing of the rendition of judgment in favor of said complainants against said Miller, nor of the issuing of execution thereon, nor of the return made by the marshal in such process, nor of what amount is due to said complainants against said Miller in their said judgment; but this defendant is informed and believes that the facts in regard to said several matters heretofore mentioned, are as set forth in said bill of complaint. And this defendant, further answering, says: That on the sixth day of April, A. D. 1857, he did purchase of said Miller, lots eight, nine, thirteen, and fourteen, in block seventy-nine, State's addition to the city of Ottawa, Illinois, and that said Miller then and there executed a deed of the same to this defendant, which deed is acknowledged and recorded in the office of the recorder, in the county of La Salle, and State of Illinois, in book No. 54, on pages 278, to which this

55 defendant asks leave to refer if necessary, and to treat it as a part of this answer. And this defendant, wishing to make to this hon. court a full statement of the conditions of said sale of said lots, says: That said lots, at the time of said sale, were subject to a mortgage for eleven hundred and twenty-five dollars, in favor of Thomas W. Joycox, of Clinton Point, New York, (which mortgage is recorded in the recorder's office aforesaid, in book No. 48, page 474, to which this defendant asks leave to refer and to treat as a part of this answer,) and this defendant purchased said lots of said Miller subject to said mortgage, and gave his two certain promissory notes to said Miller, dated April 6, 1857, with interest at six per cent. per annum, one for thirteen hundred dollars, due in three years from the date thereof, the other for twelve hundred and seventy-five dollars, due in four years from the date thereof, making the whole price of said lots forty-two hundred and ten dollars. And this defendant says that on the first of the above-mentioned notes he has made and there are endorsed two payments, one of four hundred and two dollars and fifty cents by draft on Swift, Johnson & Co., of Chicago, with interest on same to maturity of said note; the other, of eight hundred dollars, by a judgment purchased by this defendant for full value in favor of Richard H. Pease, of Albany, New York, against said Charles G. Miller, with interest on the same from August, 1857, until maturity of said first-mentioned note, and on the last of the above-mentioned notes this defendant has made the following payment, part of which are endorsed on the note: One of three hundred and fifty dollars, by draft on W. C. Richardson, Ottawa, Illinois; one of one hundred and fifty-eight dollars by draft, Eames, Allen & Co., Ottawa, Ill's; one of fifty dollars by draft, Wells, Wait & Co., Ottawa, Ill's; one by draft accepted for
56 two hundred dollars, and one of one hundred and fifteen dollars, and one by draft of sixty-five dollars, with interest on each several amounts from its respective time of payment to maturity of said last-mentioned note. And this defendant says that said sale was made in good faith, and vested all the interest which said Miller had in said lots absolutely in said defendant; and this defendant positively denies that said sale was made by collusion between this defendant and said Miller, or that he has in any way been a party to defraud the creditors of said Miller, in that he holds said lots or any other property in trust for the use of said Miller. And this defendant, further answering, says: That he has leased said lots to said Miller for five years from December 1st, 1858, in consideration of an annual rent of one hundred and seventy-five dollars, payable quarterly. And this defendant, further answering, says: That he has purchased lot No. 5, in block seventy-nine, in State's addition to Ottawa, Ill's, once owned by said Miller and wife, and by them mortgaged, in June, 1857, to Mr. Woodruff, of Chicago, Ill's, who sold the said lots to this defendant, under and by virtue of said mortgage, for the sum of seven hundred and fifty dollars. And this defendant, further answering, says: That about the purchase of said lots from said Lindley, and the conveyance of the same to said Eliza

Miller, he knows nothing whatever. And this defendant, further answering, says: That about the said mortgage held by the said Richardson he knows nothing whatever; neither does this defendant know who receives the rents and profits of the land in said mortgage mentioned; neither does this defendant know anything about the conveyance of the lands in said mortgage mentioned to this defendant and said Mary Jane Williams by said Charles G. Miller.

57 And this defendant, further answering, says: That of the discharge of the said Charles G. Miller as an insolvent debtor by the county court of Cook county, Illinois, or of the appointment of said Richardson as assignee, or of the settlement of said claim upon which said Miller was arrested, as charged in said bill of complaint, he knows nothing whatever. And this defendant further answering, says: That he does not now hold nor ever did hold any property, of any kind whatever, in trust for the use of said Miller, neither has he, in any transaction whatever, been a party to defraud the creditors of said Miller; nor does this defendant know anything about debts due to said Miller, or securities held therefor, except as herein stated, nor of any property, real or personal, held by any person in trust for the use of said Miller. And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by said bill charged, without this, that there is any other matter, cause, or thing in the said complainants' said bill of complaint contained, material or necessary for this defendant to make answer thereto, and not herein and hereby well and sufficiently answered and confessed, traversed, and avoided, or denied, is true to the knowledge or belief of this defendant. All which matters and things this defendant is ready and willing to aver, maintain, and prove, as this hon. court shall direct, and prays to be hence dismissed, with his reasonable costs and charges, in this most wrongfully maintained.

ROBERT S. WILLIAMS,
By OLIVER C. GRAY, *his Solicitor.*

58 STATE OF PENNSYLVANIA,
County of Alleghany, City of Pittsburgh, ss:

Before me, one of the alderman in and for said city, personally came Robert S. Williams, who, being duly sworn according to law, deposeth and saith, that the foregoing answers are true to the best of his knowledge and belief.

ROBT. S. WILLIAMS.

Sworn and subscribed this 29th day of November, A. D. 1859.
Coram. ANDREW McMASTER,
Alderman and ex officio Justice of the Peace.

ALLEGHANY COUNTY,
State of Pennsylvania, ss:

I, Daniel Armstrong, prothonotary of the court of common pleas in and for the county of Alleghany, in the Commonwealth of Pennsylvania, the same being a court of law and record, do by these pres-

ents, certify that Andrew McMaster, esquire, before whom the foregoing affidavit was taken, and who has thereunto, in his own proper handwriting, subscribed his name, was at that time, and now is, an alderman in and for the city of Pittsburgh, and ex officio an acting justice of the peace in and for the said county, duly commissioned and sworn, and authorized by law to take acknowledgments, administer oaths, &c., to all whose acts as such due faith and credit are, and of right ought to be, given throughout the United States and elsewhere.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court at Pittsburgh, in the said county, this 29th day of November, in the year of our Lord one thousand eight [SEAL.] hundred and fifty-nine, and of the sovereignty and independence of the United States of America the eighty-fourth.

DANIEL ARMSTRONG, *Prothonotary.*

59 Be it remembered, that on 1st day of December, 1859, a replication to answer of R. S. and Mary Jane Williams was filed in said court, which is in the words and figures following, to wit:

In the circuit court of La Salle county, State of Illinois, November term, A. D. 1859.—In chancery.

The replication of William H. Lyon and Warren W. Lyon, complainants, to the answers of Robert S. Williams and Mary Jane Williams.

These repliants, saving and reserving to themselves all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answers of the said defendants, for replication thereunto, saith that they do and will aver, maintain, and prove their said bill to be true, certain, and sufficient in the law to be answered unto by the said defendant; and that the answers of the said defendants are very uncertain, evasive, and insufficient in the law to be replied unto by these repliants without this, that *that* any other matter or thing in the said answer contained, material or effectual, in the laws to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true. All which matters and things these repliants are ready to aver, maintain, and prove, as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

HELM & CLARK,
Solis. for Compl'ts.

60 Be it remembered, heretofore, to wit, on the 18th day of June, 1859, the same being one of the days of the June term of said court for said year, and order was entered of record, which is in the words and figures following, viz:

WILLIAM H. LYON and WARREN W. LYON
vs.
CHARLES G. MILLER, WM. C. RICHARDSON, ELIZA MILLER, and MARY JANE WILLIAMS. } In chancery.

The complainants come by Helm & Clark, their solicitors, and dismiss their bill herein as to Wm. C. Richardson.

Be it remembered, that on the 11th day of July, 1860, the same being one of the days of the June term of said court for said year, the following proceedings were had and entered of record, which is in the words and figures following, to wit:

WILLIAM H. LYON and WARREN W. LYON
vs.
CHARLES G. MILLER, ROBERT S. WILLIAMS, WILLIAM C. RICHARDSON, ELIZA MILLER, and MARY JANE WILLIAMS. } In chancery.

This day the above cause coming on to be heard upon the
61 bill of the said complainants, the answer of the said defendants, Charles G. Miller, Robert S. Williams, and William C. Richardson, and the evidence at the hearing offered and read to the court, the said complainants, by their solicitors, Helm & Clark, come, and the said defendants last named, by their solicitor, O. C. Gray, also come, and the said defendants, Eliza Miller and Mary Jane Williams, come not; and it appearing to the court that the default of the said defendants last named has heretofore been entered, and that the said bill has been taken as to them as confessed; and it further appearing to the court from the said bill, and the answers of the said Charles G. Miller, Robert S. Williams, and William C. Richardson, that the said complainants did, at the October term, A. D. 1858, of the circuit court of the United States, in and for the northern district of Illinois, recover a judgment against the said defendant, Charles G. Miller, for the sum of sixteen hundred and twenty-five dollars and thirty-eight cents; that on the 1st day of November, of said year, an execution was duly issued out of the said county, for the collection of the said judgment, and duly delivered to the marshal of the United States for said district; that said execution was duly returned by the said marshal on the 31st day of February, A. D. 1859, wholly unsatisfied; and it appearing that there is now due to the complainants upon the said judgment, the said sum of sixteen hundred and twenty-five dollars and thirty-eight cents, together with the interest thereon since the sixth day of October, A. D. 1858:

And it further appearing to the court, from the evidence, that the said defendant, Charles G. Miller, on the sixth day of April, A. D.
1857, being then and there indebted to the said complainant
62 and other persons as aforesaid, was the owner of these certain pieces of real estate described as lots eight, (8,) nine, (9,) thirteen, (13,) and fourteen, (14,) of block seventy-nine, (79,) of State's addition to Ottawa, in said county, and did, on the day and year aforesaid, convey the same to the said defendant, Robert S.

Williams; and it appearing that the said lots were conveyed by the said Miller to the said Robert S. Williams, without any consideration whatever at that time or any other, and that the same were conveyed by said Miller to said Williams, and by said Williams received, and by him since held with interest, to hinder, delay and defraud the creditors of said Miller, and to keep the same beyond the reach of said creditors, and that the same have since been and are now held by the said Williams in trust for the said Miller, and that the same have, since the said conveyance and to the present time, been used, occupied, and enjoyed by the said Miller, and that the said Williams has not used, occupied or enjoyed any part thereof: It is therefore ordered, adjudged and decreed that the said conveyance of the said lots eight, (8,) nine, (9,) thirteen, (13,) and fourteen, (14,) in block seventy-nine, (79,) of State's addition to Ottawa, to the said Robert S. Williams, was made, executed, had and continued by the said defendant Miller and said defendant Williams, with intent to hinder, delay, and defraud the said complainants and the other creditors of said Charles G. Miller, and was, for that reason, as against the complainants, void, and it is further decreed that as against the said complainants and the other creditors of Charles G. Miller, each and every of the said lots was and is the property of the said Charles G. Miller; and it is further ordered, adjudged, and decreed, that the said defendant, Charles G. Miller, be required to pay to the said complainant the amount of principal and interest due to them on
63 their aforesaid judgment, within thirty days after the last day of the present term of this court; and it is further ordered, adjudged and decreed, that if the said Miller shall fail to pay the same sum, as, and within the time hereby required, the master in chancery, in and for said county, be, and he is hereby, directed, after advertising the said lots, and each and every of them in some newspaper published in the city of Ottawa, for twenty days prior to the day of sale, to offer and expose to sale, and to sell to the highest and best bidder for cash, the whole of the said lots, or so much thereof as may be necessary to satisfy in full the costs of this suit, and the amount of principal and interest due, or to grow due to the said complainants on the judgment aforesaid, and to execute to the purchaser or purchasers of said lots, or such of the same as may be sold, good and sufficient deeds of conveyance for the same, and that said sale so to be made, shall bar and divest all and all manner of interest or right or equity, or right of redemption, which the said Charles G. Miller or any of the said defendants may have in or to the said property, or any part thereof. It is further ordered, adjudged, and decreed that the said suit, as to the said defendant, William C. Richardson, be dismissed at the costs of the complainants, and that the costs of this suit be directed to be paid by the said master in chancery, out of the proceeds of said sales, if any such shall be made, and in case said sales shall not be made, that the costs of this suit shall be paid by the defendant, Charles G. Miller.

64 STATE OF ILLINOIS,
La Salle County, ss:

I, Absolom B. Moore, clerk of the circuit court in and for said county, do hereby certify that the foregoing is a true copy of all the orders of the court, and of the papers on file in my office, (except the transcripts from the circuit court of the United States for the northern district of Illinois, which were used in evidence at the trial of said cause,) appertaing to said cause.

[SEAL.] Witness my hand and the seal of said court at Ottawa, this 30th day of March, A. D. 1861.

A. B. MOORE, *Clerk*.

La Salle county circuit court, February term 1862, Saturday, March 1st.

WILLIAM H. LYON and WARREN W. LYON *et al.* *vs.* CHARLES G. MILLER, ELIZA MILLER, *et al.* } Petition for confirmation of sale.

It appearing to the court, that in pursuance of the decree heretofore entered in this case, that William H. L. Wallace, master in chancery aforesaid, did, upon the default of the defendants to satisfy the said decree at the time specified therein, give public notice in the manner required by said decree, and did, pursuant to said notice as such master, expose, sell at public auction, to the highest bidder for cash, at the south door of the court-house, in Ottawa, in the county of La Salle and State aforesaid, on Saturday, the 15th day of September, A. D. 1860, between the hours of nine o'clock in
65 the forenoon and sunset of said day, the lands therein mentioned and described, and that at the said sale William H. Bushnell, of New York, bid for said lot No. 8, in block seventy-nine, (79,) in State's addition to Ottawa, aforesaid, the sum of two hundred dollars, ($200,) and for said lot number nine in said block the sum of eleven hundred dollars, and for said lot number thirteen in said block the sum of one hundred and sixty-seven $\frac{24}{100}$ dollars, and for said lot foreteen in the said block the sum of four hundred dollars, making in all the sum of eighteen hundred and sixty-seven $\frac{24}{100}$ dollars, and that the said William H. Bushnell being the highest bidder at said sale for each of said lots, the said lots were, by the said master in chancery, struck off and sold to the said William H. Bushnell at the respective prices aforesaid. And it further appearing to the court, that afterwards, on the 13th day of September, A. D. 1860, the said William H. Wallace, as master aforesaid, duly executed, acknowledged, and delivered his deed for the said premises to the said William H. Bushnell, it is therefore hereby ordered that the said sale be, and the same is hereby, ratified and confirmed by this court.

STATE OF ILLINOIS,
La Salle County, ss:

I, Absalom B. Moore, clerk of the circuit court in and for said county, do hereby certify that the above and foregoing is a true, full, and complete copy of order of confirmation, etc., in the foregoing entitled cause.

[SEAL.] Witness my hand and the seal of said court, at Ottawa, this 11th day of June, A. D. 1862.

A. B. MOORE, *Clerk*.
CHAS. H. HOOK, *Deputy*.

66 The plaintiff, to further maintain the issue on his part, offered and gave in evidence to the jury an instrument in writing, which is as follows:

Whereas the circuit court of La Salle county, in the State of Illinois, in session at Ottowa in said county, on the eleventh day of July, in the year of our Lord one thousand eight hundred and sixty, the same being one of the days of the June term of said court in the year aforesaid, did make and enter of record, on the records of said court, a decree in a certain cause then pending in said court, on the chancery side thereof, wherein William H. Lyon and Warren W. Lyon were complainants, and Charles G. Miller, Robert S. Williams, William C. Ricardson, Eliza Miller, and Mary Jane Williams were defendants, which said decree was and is in the words and figures following, that is to say:

WILLIAM H. LYON and WARREN W. LYON
vs.
CHARLES G. MILLER, ROBERT S. WILLIAMS, WILLIAM C. RICHARDSON, ELIZA MILLER, and MARY JANE WILLIAMS. } In chancery.

67 This day the above cause, coming on to be heard upon the bill of the said complainants, the answer of the said defendants, Charles G. Meiller, Robert S. Williams, and William C. Richardson, and the evidence at the hearing offered and read to the court, the said complainants by their solicitors, Helme and Clark, come, and the said defendants last named by their solicitor, O. C. Gray, also come, and the said defendants, Eliza Miller, and Mary Jane Williams, come not. And it appearing to the court that the default of the said defendants last-named has heretofore been entered, and that the said bill has been taken as to them as confessed; and it further appearing to the court, from the said bill and the answers of the said Charles G. Meiller, Robert S. Williams, and William C. Richardson, that the said complainants did, at the October term, A. D. 1858, of the circuit court of the United States in and for the northern district of Illinois, recover a judgment against the said defendant Charles G. Meiller for the sum of sixteen hundred and twenty-five dollars and thirty-eight cents, that on the first day of November of said year an execution was duly issued out of the said county for the collection of the said

judgment and duly delivered to the marshal of the United
68 States for said district, that said execution was duly returned by the said marshal on the 31st day of February, A. D. 1859, wholly unsatisfied; and it appearing that there is now due to the complainants upon the said judgment the said sum of sixteen hundred and twenty-five dollars and thirty-eight cents, together with the interest thereon since the sixth day of October, A. D. 1858. And it further appearing to the court from the evidence that the said defendant Charles G. Meiller, on the sixth day of April, A. D. 1857, being then and there indebted to the said complainant and other persons as aforesaid, was the owner of those certain pieces of real estate described as lots eight, (8,) nine, (9,) thirteen, (13,) and fourteen, (14,) of block seventy-nine, (79,) of State's addition to Ottawa, in said county, and did, on the day and year aforesaid, convey the same to the said defendant, Robert S. Williams; and it appearing that the said lots were conveyed by the said Meiller to the said Robert S. Williams without any consideration whatever, at that time or any other, and that the same were conveyed by said Miller to said Williams, and by said Williams received, and by him since held, with interest, to hinder, delay, and defraud the credi-
69 tors of said Meiller, and to keep the same beyond the reach of said creditors, and that the same have since been, and are now, held by the said Williams in trust for the said Meiller, and that the same have, since the said conveyance to the present time, been used, occupied, and enjoyed by the said Miller, and that the said Williams has not used, occupied, or enjoyed any part thereof: It is therefore ordered, adjudged, and decreed, that the said conveyance of the said lots eight, (8,) nine, (9,) thirteen, (13,) and fourteen, (14,) in block seventy-nine, (79,) of State's addition to Ottowa, to the said Robert S. Williams was made, executed, had, and continued by the said defendant Miller and said defendant Williams, with intent to hinder, delay, and defraud the said complainants and the other creditors of said Charles G. Meiller, and was, for that reason, as against the complainants, void. And it is further decreed, that as against the said complainants and the other creditors of Charles G. Miller, each and every of the said lots was and is the property of the said Charles G. Meiller. And it is further ordered, adjudged, and decreed, that the said defendant Charles G. Meiller, be required to pay to the said complainants the amount of
70 principal and interest due to them on their aforesaid judgment within thirty days after the last day of the present term of this court. And it is further ordered, adjudged, and decreed, that if the said Miller shall fail to pay the same sum as and within the time hereby required, the master in chancery in and for said county be, and he is hereby, directed, after advertizing the said lots and each and every of them in some newspaper published in the city of Ottawa, for twenty days prior to the day of sale, to offer and expose to sale, and to sell to the highest and best bidder for cash, the whole of the said lots, or so much thereof as may be necessary to satisfy in full the costs of this suit, and the amount of principal and

interest due or to grow due to the said complainants on the judgment aforesaid, and to execute to the purchaser or purchasers of said lots, or such of the same as may be sold, good and sufficient deeds of conveyance for the same. And that said sale so to be made shall bar and divest all and all manner of interest, right, or equity, or right of redemption, which the said Charles G. Miller or any of the said
71 defendants may have in or to the said property, or any part thereof.

It is further ordered, adjudged and decreed, that the said suit as to the said defendant William C. Richardson be dismissed at the costs of the complainants, and that the costs of this suit be directed to be paid by the said master in chancery out of the proceeds of said sales, if any such shall be made, and in case said sales shall not be so made, that the costs of this suit shall be paid by the defendant, Charles G. Miller.

And whereas, in pursuance of said decree, the undersigned, William H. L. Wallace, master in chancery of said court, did, at the request of said complainants by their solicitors, give public notice in the manner required by said decree, that I should, as such master, expose said premises in said decree mentioned to sale at public auction, to the highest bidder for cash, at the south door of the county court-house in Ottowa, in said county, on Saturday, the fifteenth day of September, A. D. 1860, between the hours of nine o'clock in the forenoon and sunset of said day, which said notice was published in the "Ottowa Free Trader,"
a weekly newspaper printed and published in Ottowa afore-
72 said, for four successive weeks, beginning on the twenty-fifth day of August and ending on the fifteenth day of September, A. D. 1860, and said notices contained a statement of the parties to said suit, a reasonably certain description of said premises in said decree mentioned, and the time, place, and terms of said sale. And on the said fifteenth day of September, A. D. 1860, at the hour of one o'clock in the afternoon of said day, I did, at the request of said complainants' solicitors, offer said premises in said decree mentioned for sale at public auction, at the south door of the county court house in Ottawa, aforesaid; and at said sale William H. Bushnell, of New York, bid for said lot number eight (8) in said block number seventy-nine (79) in the State addition to Ottawa aforesaid the sum of two hundred dollars, ($200 00:) and for said lot nine (9) in said block, the sum of eleven hundred dollars, ($1,100 00;) and for said lot thirteen (13) in said block, the sum of one hundred and sixty-seven dollars and twenty-four cents, ($167 24;) and for said lot fourteen (14) in said block, the sum of four hundred dollars, ($400 00;) making in the
aggregate the sum of eighteen hundred and sixty-seven dol-
73 lars and twenty-four cents, ($1,867 24;) and the said William H. Bushnell, being the highest bidder at said sale for each of said lots, and the respective sums aforesaid being the highest sums bidden for said lots respectively, the said lots were by me, as such master in chancery, struck off and sold to the said William H. Bushnell at the respective prices aforesaid.

Now, therefore, know all men by these presents that I, William H.

L. Wallace, as such master in chancery as aforesaid, in pursuance of said decree, and in consideration of the premises, and of the said sum of eighteen hundred and sixty-seven dollars and twenty-four cents so bidden by the said William H. Bushnell as aforesaid, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said William H. Bushnell, and to his heirs and assigns, all the right, title, and interest of the said defendants in said chancery suit, of, in, and to the said lots so sold as aforesaid; that is to say, lots numbered eight, (8,) nine, (9,) thirteen, (13,) and fourteen, (14,) in block number seventy-nine, (79,) in the State's addition to Ottawa in said county, together with all and singular the tenements
74 and hereditaments thereunto belonging. To have and to hold the above bargained premises, with the appurtenances, unto the said William H. Bushnell, his heirs and assigns forever.

In testimony whereof, I have hereunto set my hand and seal, as such master in chancery, this fifteenth day of September, A. D. 1860.

W. H. L. WALLACE, [SEAL.]
Master in Chancery.

STATE OF ILLINOIS,
La Salle County, ss:

Be it remembered, that on this 17th day of September, A. D. 1860, personally appeared before the undersigned, clerk of the circuit court in and for said county, William H. L. Wallace, master in chancery of said court, who is to me personally known to be the same person who executed the foregoing deed, and acknowledged that he had executed said deed as such master in chancery for the uses and purposes therein expressed.

[L. S.] In testimony whereof, I have hereto set my hand and affixed the seal of said court the day and year above written.

JOHN F. NASH, *Clerk.*

75 STATE OF ILLINOIS,
La Salle County, 2302:

I hereby certify that this deed was filed for record September 17, 1860, at 1½ o'c. p. m., and duly recorded in book No. 73, pages 533, 534, 535, and 536.

J. F. NASH, *Clerk.*

The plaintiff, to further maintain the issue on his part, offered and gave in evidence to the jury an instrument in writing, which is as follows:

This indenture, made this fourth day of February, in the year of our Lord one thousand eight hundred and sixty-one, between William H. Bushnell, of the city of New York, the party of the first part, and Jameson C. Sherry, of the city of Brooklyn, of the second part, witnesseth:

That the said party of the first part, for and in consideration of one dollar in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second

part forever released and discharged therefrom, has remised, released, sold, conveyed, and quit-claimed, and by these presents does remise, release, sell, convey, and quit-claim unto the
76 said party of the second part, his heirs and assigns forever, all the right, title, interest, claim, and demand, which the said party of the first part has in and to the following described lot, piece, or parcels of land, to wit: Lots number eight, (8,) nine, (9,) thirteen, (13,) and fourteen, (14,) in block number seventy-nine, (79,) in the State's addition to the town, now city, of Ottawa, in the county of La Salle and State of Illinois. To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, and all the estate, right, title, interest, and claim whatever of the said party of of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns forever.

In witness whereof, the said party of the first part hereunto set his hand and seal the day first above written.

WM. H. BUSHNELL. [SEAL.]

Sealed and delivered in presence of—
JOHN A. BROSS.

77 STATE OF ILLINOIS,
Cook County, ss:

I, John A. Bross, a notary public in and for the county and State aforesaid, do hereby certify that William H. Bushnell, who is personally known to me as the same person whose name is subscribed to the within instrument of writing, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this fourth day of
[SEAL.] February, A. D. 1861.

JOHN A. BROSS,
Notary Public.

The plaintiff, to further maintain the issue on his part, called, as a witness, William H. Bushnell, who, being duly sworn, testified that he knew the parties to the suit; that he had seen the property in question; Miller, the defendant, resided on the property in 1856; the property was purchased at the sale on the decree for the benefit of Albert Jewett and Wm. H. Lyon & Co., who were the creditors interested in the claim against the defendant, Miller; that he conveyed the property to plaintiff, and it was held by him for the
78 benefit of the creditors interested; that the debt was contracted by Miller, in 1856 or 1857; could not tell the date when; the property in question cost us about three thousand dollars, and is worth from twenty-five hundred to three thousand dollars.

The plaintiff then called Parnell Munson, deputy U. S. marshal, as a witness, who, being duly sworn, testified that he had a writ of pos-

session in this case, and went to defendant Miller, and showed him the writ; that Miller's wife was sick, and unable to leave the house; Miller agreed to deliver the property to a Mr. Smith, who was to act for the plaintiff, in ten days, and he would take a lease from the plaintiff for that time or longer, if so agreed; Mr. Smith receipted the property to me; it was the 18th January, 1861. I delivered the property to Mr. Smith, as agent of the plaintiff, and so returned the writ.

Here the plaintiff rested the case on his part.

The defendant Charles G. Miller, to maintain the issue on his part, offered and gave in evidence the record and proceedings in a suit in chancery between Edward S. Mills and others against Charles G. Miller, the defendant, and others, which record and proceedings are as follows:

79 Pleas in the circuit court of the United States for the northern district of Illinois, before the Hon. Thomas Drummond, judge of the district court of the United States, and on Saturday, the thirteenth day of July, in the year of our Lord one thousand eight hundred and sixty-one, and of the independence of the United States the 82d year.

WM. H. BRADLEY, *Cl'k.*

EDWARD S. MILLS and NEWELL BLISS
v.
CHARLES G. MILLER and WILLIAM C. RICHARDSON. } Chancery.

Be it remembered, that on the twenty-sixth day of April, A. D. one thousand eight hundred and sixty-one, the said complainants, by Smith and Dewey, solicitors, came into the clerk's office of the circuit court of the United States for the northern district of Illi-
80 nois and filed their bond for costs and bill for complaint against the defendants in the words and figures following, to wit:

Bond for costs.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court, June term, A. D. 1858.

EDWARD S. MILLS *et al.*
v.
CHARLES G. MILLER *et al.* } In chancery.

I hereby enter myself security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court; and in default of payment by the plaintiffs of any costs or adjudged to be paid by them, I hereby agree and stipulate that execution may issue against my property for any costs taxed against them.

Dated this 26th day of April, A. D. 1858.

E. S. SMITH.

Endorsed: Filed April 26th, 1862.

WM. H. BRADLEY, *Cl'k.*

81 *Bill of complaint.*

United States of America, circuit court of the United States, for the seventh circuit and northern district of Illinois.—Sitting in chancery.

NORTHERN DISTRICT OF ILLINOIS, *ss.*

To the judges of the circuit court of the United States for the seventh circuit and northern district of Illinois: Edward S. Mills and Newell Bliss of the city of New York, who are citizens of the State of New York, bring this their bill against Charles G. Miller and William C. Richardson, of the village of Ottowa, county of La Salle, and State of Illinois, who are citizens of the State of Illinois, and residing in said district aforesaid, and therefore your orators complain and say, that heretofore, to wit, in the term of October, in the year of our Lord one thousand eight hundred and fifty-seven, in the circuit court of the United States for the seventh circuit and northern district of Illinois, by the consideration and judgement of said court, your orators recovered against the said Charles G. Miller, defendant
82 in this suit, the sum of six hundred and seventy dollars and twenty-one cents, for the damage which they had sustained, as well by reason of the non-performance of certain promises and undertakings, as for the costs and charges of your orators by them about their suit in that behalf expended, which were adjudged to your orators in and by the said court, whereof the said Charles G. Miller was convicted, as by the record of the said judgment in the office of the clerk of said court, reference being thereto had, and to which for greater certainty your orators beg leave to refer, will more fully and at large appear. And your orators further show unto your honor, that the said judgment so recovered in manner aforesaid remaining in full force and effect, and the costs and damages aforesaid unpaid and unsatisfied, your orators, on or about the twenty-fourth day of November, in the year of our Lord one thousand eight hundred and fifty-seven, for the purpose of obtaining satisfaction of the said judgment, sued and prosecuted out of the said court a writ of the people, called a fieri facias, directed to the United States marshal for the northern district of Illinois, that being the district in which
83 said defendant resided at the time of the issuing of said writ, by which said writ the said marshal was commanded that of the goods, chattels, lands, and tenements of said Charles G. Miller, defendant, in your district, you cause to be made the sum of six hundred and seventy dollars and twenty-one cents, which your orators in the said circuit court recovered against the said defendant as aforesaid, and that he should have the money at the clerk's office of said court at Chicago, in said district, in ninety days from the date thereof, to satisfy the judgment so recovered by your orators as aforesaid, and that he should have then and there that writ.

And your orators further show unto your honor, that the said writ of fieri facias, before the delivery thereof to the said marshal of the

said district aforesaid, was duly endorsed, and was afterwards, and on or about the twenty-fourth day of November, in the year of our Lord one thousand eight hundred and fifty-seven, delivered to the said marshal to be executed in due form of law.

84 And your orators further show unto your honor, that the said marshal of said district aforesaid, on the fifth day of December, in the year of our Lord one thousand eight hundred and fifty-seven, returned on the said writ, to him in that behalf directed and delivered as aforesaid, that on the said fifth day of December, A. D. eighteen hundred and fifty-seven, he made a demand of the defendant Charles G. Miller for money or property with which to satisfy said writ, and was informed by said Miller that he had neither money or property to satisfy the same; that after diligent search and finding no property upon which to levy, said marshal returned said writ of fieri facias wholly unsatisfied, as by the said writ of fieri facias and the directions and the return of the said marshal endorsed thereon as aforesaid, filed in the office of the clerk of the said circuit court, will more fully appear, and to which, or to a copy thereof, your orators pray leave to refer. And your orators show unto your honor that the said judgment still remains in full force and effect, not reversed, or satisfied, or otherwise vacated, and

85 that the said Charles G. Miller, or any one else, has not paid the same to your orators, but has hitherto wholly neglected and refused so to do. And your orators further show unto your honor that there is now actually and equitably due to your orators, upon the aforesaid judgment, the sum of six hundred and seventy dollars and twenty-one cents, together with the interest thereon from the twenty-third day of November, one thousand eight hundred and fifty-seven, over and above all claims of said defendant, by the way of set off or otherwise, besides the sum of five dollars marshal's fee on said writ of fieri facias.

And your orators further show unto your honor, that on or about the first day of June, and before that time, in the year of our Lord one thousand eight hundred and fifty-seven, the said defendant Charles G. Miller was engaged in the mercantile business at the village of Ottawa, in the district aforesaid, and that your orators are informed and believe that in the course of the said mercantile business of the said defendant Charles G. Miller, divers persons became

86 indebted to him to a large amount, and that the said defendant last named, at the time of filing this your orators' bill of complaint, has debts due to him and for which he holds divers securities and evidences to a large amount, and he has divers goods, wares, and merchandize, and other articles of personal property which belong to him, or in which he is in some way or manner beneficially interested, and that he has equitable interests and things in action of some nature or kind which might and ought to be applied to the payment of your orators' said judgment against him the said defendant, Charles G. Miller.

And your orators also charge that the said defendant Charles G. Miller was, at the time of the rendition of the judgment aforesaid,

and is now, the owner of, or in some way or manner beneficially interested in, some real estate in this or some other State or Territory, or some chattels real of some name or kind, or some contract or agreement relating to real estate, or the rents, issues, and profits of some real estate, or that the said defendant, Charles G. Miller, is owner of, or in some way beneficially interested in, the stock of some company, incorporated or unincorporated, or in the profits of some company or copartnership, and also that he has in his possession at the time of filing of this your orators' bill of complaint, some money in coin or bank bills, or that he has money deposited in some bank or elsewhere to his credit, or that he has money or securities for the payment of money held by some other person in trust or otherwise for his benefit.

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And if the said defendant Charles G. Miller has made any sale, assignment, or transfer of his property or effects, or any part thereof, your orators expressly charge that they believe such sale, assignment, or transfer is merely colorable, and made with a view of protecting the property or effects of said defendant Charles G. Miller, so assigned, and placing the same beyond the reach of your orators' said judgment, and enabling the said defendant Charles G. Miller, to control and enjoy the same, and the avails thereof, or to hinder and delay your orators in the collection of their debt now in judgment as aforesaid, and that so it would appear if the said defendant Charles G. Miller would state and set forth when and to whom such sale, transfer, or assignment was made, and what was the amount in value of the property or effects so sold, assigned, or transferred, and what were the terms upon which such sale, transfer or assignment was made, and what disposition has been made of the property or effects so sold, assigned, or transferred, and in whose possession the same now is, or what has been done with the avails thereof. And your orators claim a full and complete discovery of all such property, effects and things in action, belonging to the said defendant Charles G. Miller, and of all trusts whereby any property, debts or effects are held for the use or benefit of the said defendant last named, and of every sale, assignment, or transfer which the said defendant last named has made of his property, debts, or other effects, and of the person or persons to whom such sale, assignment, or transfer has been made, the amount and value of the property, debts, or other effects so sold, assigned or transferred, and the trusts and other conditions upon which such sale, assignment, or transfer was made, and of all the facts and circumstances relating thereto, and particularly what is the situation of the property, debts, or other effects sold, assigned, or transferred, at the time of filing this your orators' bill of complaint.

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And your orators further show unto your honor, that they have reason to believe, and do believe, that the said defendant last named has property and other equitable interest, things in action, or effects of the value of more than five hundred dollars, exclusive of all prior just claims thereon, and which your orators have been unable to reach by execution on said judgment against the said defendant last named; and that this your orators' bill of complaint is not ex-

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hibited by collusion with the said defendant, or with any other person, or for the purpose of protecting the property or effects of said defendant Charles G. Miller against the claims of other creditors, but for the sole purpose of compelling payment and satisfaction of the judgment so as aforesaid recovered by your orators against the said defendant Charles G. Mllier.

And your orators further show unto your honor, that they are informed and believe, and so charge the fact to be, that sometime during the summer last past said Charles G. Miller made a pretended sale of his stock of goods and merchandize, notes, and accounts at Ottawa aforesaid, and of great value, but of what value your
90 orators are not advised and cannot state, to the defendant William C. Richardson. And your orators further charge, upon information and belief, that said pretended sale was not bona fide, and did not transfer the interest of said Miller therein to said Richardson, and was made by collusion between the said defendants without adequate consideration from said Richardson to said Miller for the same; that said Miller was then greatly in debt, and unable to pay his debts, or in failing circumstances, which facts the said defendants then very well knew or had reason to believe or suspect; that said pretended sale was so made to hinder, delay, and defraud the creditors of said Miller, and is fraudulent and void as to your orators.

And your orators further show unto your honor, that they are informed and believe, and so charge the fact to be, that said defendant Richardson has property and effects in his possession or under his control belonging to said Miller, or in which he is interested, which ought to be applied in satisfaction of your orators' said judgment.
91 And your orators well hoped that the said defendant Chas. G. Miller would have paid to your orators the amount due thereon on said judgment, or would have applied for that purpose any property, money, debts, or other equitable interests or things in action belonging to him, or in which he is in any way interested, as in equity and good conscience he ought to have done. But now so it is, may it please your honor, that the said defendants, combining and confederating together, and with divers other persons to your orators unknown, but whose names, when discovered, they pray may be inserted herein with proper and apt words, to charge them and contriving how to injure and defraud your orators in the premises, neglect or refuse to pay the amount so due to your orators on their said judgment, or to apply, for that purpose, any property, money, debts, or other equitable interests or things in action belonging to the said defendant Charles G. Miller, and for reason whereof the said defendants set up a variety of unfounded pretences; all which actings and doings, neglects and pretences, are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orators in the premises. In tender consideration thereof, and for as much as your orators are remediless in the premises, at
92 and by the direct and strict rules of the common law, and cannot have adequate relief save in a court of equity, where mat-

ters of this and a similar nature are properly cognizable and releivable: to the end, therefore, that the said defendants may, if they can, show why your orators should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to all and singular the matters and things hereinbefore stated and charged, and particularly to such of the several interrogatories hereinafter numbered and set forth, as by the note here under written they are required to answer; that is to say, the said defendants may fully set forth and discover, according to the best of their knowledge, remembrance, information, and belief, the nature and situation, amount and value of all the property, interest, and effects of the said defendant Charles G. Miller, including all things in action, of whatever nature or kind, with all the particulars relating thereto, and that they may answer and state whether, at the time of filing this your orators' bill of complaint, the said defendant Charles G. Miller has not debts due to him to a
93 considerable amount; and if so, that they may state particularly the amount of such debts, respectively, and from whom the same are due, and what security is held therefor, and also that they may state which and what amount of said debts are good and collectable, and what amount bad or doubtful, and whether, at the time of filing this your orators' bill of complaint, they have not some property, real and personal, in law or equity, belonging to him, or held in trust for him, or in which he has some beneficial interest of some kind or description; and if so, that they may state and set forth a full, true, and particular account thereof, and the nature and value of his interest therein, and that they may also state whether he has not money of some kind in his possession, or under his control, or deposited to his credit, or for his use, or in some way or manner held for his use and benefit; and if so, that they may state and set forth particularly the amount thereof, and how and by whom the same is held, and that they may also state whether he has any other equitable interest or thing in action, or other means belonging to him, or in which he is in any way interested, whereby he could pay any
94 part of the amount so as aforesaid due to your orators upon their said judgment against him, the said defendant Charles G. Miller. And if the said defendant last named has made any sale, assignment, or transfer of his property and effects, or any part thereof, that then the said defendants may state and set forth, each for himself, jointly or separately, generally, but not in items, what property or effects have been so sold, assigned, or transferred, and the value thereof, and particularly when and to whom, and for what purpose, and upon what terms and conditions such sale, assignment, or transfer was made, and what has been done under such sale, assignment, or transfer, and what has been done with the property or effects so sold, assigned, or transferred, and the avails thereof; and that the said defendants may specially state or set forth, each for himself, jointly or separately—

1st. When was said pretended sale made to the defendant, Richardson; what was the amount, description, and value of said goods and merchandize at their costs price, and what has been done with the same; what am't of notes and accounts were there, if any, and against whom were they held?

95 2d. What did said Richardson pay, or was he to pay, for said goods and merchandise, notes and accounts; when and in what manner was the same to be paid, and what were the terms and conditions of said pretended sale. And that said defendants may set forth and state all the other facts and circumstances relating to the matters and things hereinbefore stated and charged, as fully and particularly as though they, and each of them, were herein specially interrogated thereto.

And your orators further pray this honorable court that said pretended sale, from the defendant Miller to defendant Richardson, may be adjudged and declared fraudulent and void as to your orators, and that the same may be set aside and the property so transferred, or the avails thereof, subjected to the satisfaction of your orators' said judgment

And the said defendants, or one of them, may be decreed to pay your orators the amount so as aforesaid due to them for principal and interest on their said judgment, together with your orators' costs and charges in this behalf sustained, and may be decreed to

96 apply for that purpose any money or property, real or personal, in law or equity, debts, choses in action, or equitable interests belonging to said defendant Charles G. Miller, or held in trust for him, or in which he is in any way or manner beneficially interested; and that the said defendants may be enjoined and restrained from selling, assigning, transferring, delivering, negotiating, discharging, receiving, collecting, incumbering, or in any way or manner disposing of, or intermeddling with, any debts or demands due to said Charles G. Miller, or any bills, bonds, notes, drafts, checks, book accounts, mortgages, judgments, or other debts due to him, whether in his possession or held by some other person in trust for him or to his use or benefit, and also from selling, assigning, transferring, or in any manner incumbering, or disposing of, or intermeddling with, any money, in coin, bank bills, drafts, or checks, belonging to him, whether in his possession or held by any person in trust for his use or benefit, or any stock or interest in any private or incorporated company, or any property, real or personal, things in action, or chattels real held by him, or by any other person for him,

97 or in which he has any interest whatever, except when such trust has been created by, or the fund so held in trust has proceeded from, some person other than the defendant, Charles G. Miller; and that the defendant Richardson may be enjoined and restrained from selling, assigning, incumbering, transferring, or in any way disposing of or intermeddling with any of the property so transferred to him, as aforesaid, by the defendant Charles G. Miller, or the avails or proceeds thereof, until the further order of this court.

And that the said defendant last named may also be in like man-

ner prohibited from making any assignment of his property, and from confessing any judgment for the purpose of giving preference to any other creditor over your orators, and from doing any other act to enable other creditors to obtain his property; and that a receiver may be appointed, according to the course of practice in this court and with the usual powers of receivers in like cases, of all the property, equitable interests, things in action, and effects of the said defendant Charles G. Miller.

And that your orators may have such further or such other relief in the premises as the nature of their case may require, and as shall be agreeable to equity and good conscience:

98 May it please your honor to grant unto your orators the people's writ of injunction, issuing out of and under the seal of this honorable court, to be directed to the said defendants, Charles G. Miller and William C. Richardson, and to the counsellors, attorneys, solicitors, trustees and agents therein, and thereby commanding and strictly enjoining the said defendants and the persons before mentioned, in manner aforesaid.

And may it please your honor to grant unto your orators the people's writ of subpœna, issuing out of and under the seal of this honorable court, to be directed to the said defendants, Charles G. Miller and William C. Richardson, therein and thereby commanding them and each of them, on a certain day, and under a certain penalty, to be therein inserted, that they personally be and appear before the judges of the circuit court of the United States for the seventh circuit and northern district of Illinois, at the court-room in the city of Chicago, then and there to answer all and singular, the premises, and to stand to, and abide by, and perform such order and decree therein as to your honor shall seem agreeable to equity and good conscience. And your orators will ever pray, &c.

99 EDWARD S. MILLS,
NEWELL BLISS,
By E. S. SMITH, *their Agent.*
SMITH & DEWEY,
Compl'ts' Solicitors and Attorney.
E. M. DEWEY, *of Counsel.*

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

On this 26th day of April, one thousand eight hundred and fifty-eight, personally came before me ——— ———, who, being duly sworn, saith that he is agent of the above-named complainants for the collection of the judgment in the foregoing bill mentioned; that said complainants are non-residents of the State of Illinois, and are not now within the State of Illinois, to this deponent's knowledge; that this deponent has read the foregoing bill of complaint, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters and things therein stated, upon information and belief, and as to these matters he believes it to be true.

E. M. DEWEY.

Sworn to and subscribed before me this said 26th of April, A. D. 1858.

WM. H. BRADLEY, *Clerk*.

100 Endorsed: Filed April 26, 1858.

WM. H. BRADLEY, *Clk*.

And thereupon a summons and notice for injunction issued in the words and figures following, to wit:

Summons, &c.

UNITED STATES OF AMERICA,
Northern District of Illinois:

The United States of America, to Charles G. Miller and William C. Richardson, greeting:

We command you, and every of you, that you appear before our judges of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in said district, on the first Monday in the month of June next, to answer the bill of complaint of Edward S. Mills and Newell Bliss, this day filed in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you
101 by default.

To the marshal of the northern district of Illinois to execute.

Witness the Hon. Roger B. Taney, chief justice of the supreme court of the United States of America, at Chicago aforesaid, this 26th day of April, in the year of our Lord one thousand eight
[SEAL.] hundred and fifty-eight, and of our independence the eighty-second year.

WM. H. BRADLEY, *Clk*.

Memorandum.

The within named defendants are notified that unless they and each of them shall enter their appearance in the clerk's office of said court, at Chicago aforesaid, on or before the day to which the within writ is returnable, the bill of complaint will be taken against them as confessed, and a decree entered according.

WM. H. BRADLEY, *Clerk*.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss :

Circuit court for the northern district of Illinois, of the March term, A. D. 1858.

102 EDWARD S. MILLS *et al.*
v.
CHARLES G. MILLER *et al.* } In chancery.

Take notice that we shall move this honorable court on the 4th day of May next at the going in of the court on that day, or as soon thereafter as counsel can be heard, that a writ of injunction issue against the defendants herein named in accordance with the prayer of the bill herein.

Yours, &c.,

SMITH & DEWEY,
Compl'ts' Sol's.

Dated the 26th day of April, 1858.

TO EACH OF THE DEFENDANTS.

To the Marshal:

The marshal will serve this subpœna and notice for a writ of injunction personally upon each of the defendants, or, in case any of them cannot be found, then serve on such by leaving a copy thereof at the dwelling-house or usual place of abode of such defendant, with some free white person, who is a member or resident of the family, of suitable age and discretion.

SMITH & DEWEY,
Compl'ts' Sol's.

103 Endorsed : Filed May 13th, 1858.
WM. H. BRADLEY, *Cl'k.*

And afterwards, to wit, on the 3d day of June, A. D. 1862, in the record of the proceedings of said court in said cause is the following entry, to wit :

EDWARD S. MILLS and NEWELL BLISS
v.
CHARLES G. MILLER and WILLIAM C. RICHARDSON. } In chancery.

On motion of the complainants, by their solicitors, leave is granted them by the court to examine the defendant Charles G. Miller orally before the master, and that the master be authorized and empowered to issue process to compel his attendance before him for that purpose.

And afterwards, to wit, on the 5th day of June, A. D. 1858, the said defendants, by M. R. M. Wallace, come and enter their appearance herein in the words and figures following, to wit :

104 UNITED STATES OF AMERICA:

Northern district of Illinois, circuit court thereof, May term, A. D. 1858.

EDWARD T. MILLS *et al.*
v.
CHARLES G. MILLER and WILLIAM C. RICHARDSON. } Creditor's bill.

The said defendants, by M. R. M. Wallace, their solicitor, hereby enter their appearance in the above entitled cause.

M. R. M. WALLACE,
Def'ts' Sol'r.

Endorsed: Filed June 5, 1858.

WM. H. BRADLEY, *Cl'k.*

And afterwards, to wit, on the 7th day of March, A. D. 1860, the said J. Tilden Moulton, the master in chancery of this court, comes and files his report in this behalf in the words and figures following, to wit:

In the circuit court of the United States of America within and for the northern district of Illinois.—In chancery.

105 EDWARD S. MILLS, NEWELL BLISS,
v.
CHARLES G. MILLER and WILLIAM C. RICHARDSON.

Master's report of examination of Charles G. Miller.

Pursuant to an order made in the said court in the above-entitled cause, on the third day of June, in the year of our Lord one thousand eight hundred and fifty eight, wherein and whereby leave is given to the complainants by the court to examine the defendant Charles G. Miller orally, under oath, before the master, and that the master be authorized and empowered to issue process to compel his attendance before him for that purpose, I, J. Tilden Moulton, the said master, do hereby report, that on the eighteenth day of the same June, I issued a summons, which is hereto attached, and with the return thereon is made a part of this report; that on the thirteenth day of July, following, I was attended by the said Charles G. Miller and by Mr. Dewey, solicitor for the complainants, and on the thirteenth day of July, aforesaid, the said Charles G. Miller was by me first duly
106 cautioned and sworn to make true answers to such questions as should be put to him under the direction of the master, and did thereupon, upon examination, make answer and say:

I sold out to Richardson the third or fifth of August, 1857. Richardson isn't any relative to me. He never has been in business with me. I have never been connected with him in any way. I have done business for his father in the way of paying out money; he was a large produce dealer—a dealer in pork and beef. I am really not

able to say who made the first proposition to sell out—him or me. I think I made the first proposition. Well, I tell you he was my endorser to a large amount, and there was a five thousand dollar note past due at the bank, and I told him that the only way that I knew of that he could make himself secure was, to buy me out and assume the payment of those notes in the bank; which he did. He bought all my stock of goods in trade at that time; he never bought a note or account. The goods amounted to $8,700 00, and a little over. He paid me eighty cents on the dollar of New York, cost *cost* of transportation added. They were the remains of two old stocks of
107 goods that I bought; one of the same Richardson, and the other of Leter Oliphant. Those of Oliphant I bought in June, 1855. I owed him, Richardson, twenty-five hundred dollars on the stock of goods I bought of him nearly two years before. They amounted to thirty-five hundred dollars, in three payments—six, twelve, and twenty-four month; not equal payments. I know I paid him a thousand dollars in the spring; and when the next payment came round, I couldn't pay it, and he consolidated the notes and extended the time. I do emphatically say, under oath, that I had paid him only one thousand dollars on the goods I bought of him up to the time I made the sale to him. The balance he paid me in two or three months afterwards, by assuming debts—one to Strong, Adriance & Co., of New York, for $800 00; one to Joseph Coolson, of Ottawa, for $500 00, for borrowed money. There was, on which he was endorser, an agreement at the time he purchased the goods; he was to pay the balance over the $5,000 00 note and the $2,500 00 due him within ninety days, in cash or otherwise. It was considered
108 equivalent to a cash sale. He didn't give me his note for the balance of course, when he was my endorser to the amount of $8 or 9,000, besides. We took a faithful inventory of everything in the store—goods, furniture, everything—when I sold to him at 80 cents on the dollar. My notes and accounts at that time must have amounted to upwards of twenty thousand dollars; they certainly didn't exceed twenty-five thousand, I don't think. I am not able to say how much I owed at that time. I hadn't any real estate at that time. Yes; I held real estate at the time I sold my goods. I had a farm—280 acres—near Ottawa, worth forty dollars an acre. It wouldn't have sold for that cash—$30 00, I guess. That is all the real estate I had then. I sold lots 8, 9, 13, and 14 on block 79, in State's addition to Ottawa, subject to incumbrances; I got about $2,400 for it, over and above incumbrances. I used the money in my business; that's what I sold it for. Williams is my son-in-law. The amount of incumbrance on it was $9,125, and interest for one year at 20 per cent., to J. W. Joycox, of New York, a stranger to me. I borrowed the money of his attorney or agent, John P.
109 Anthony. That property was worth about that amount, not any more. I got the equivalent of cash for it. My residence was on the property; my house cost me $1,400. The lots cost me $500. I bought the lots as much as six or seven years ago. Williams, the same man, bought the farm. He only paid me $2 or 300

over the incumbrances upon it. It was covered with incumbrances. The $2 or 300 was paid in money. I drew a draft on him. I didn't see him when I sold him the farm. I saw him in July, I believe, and told him of my embarrassed condition. I had written to him several times before. The understanding was, that if his father could take care of the incumbrances, he was to have the farm. I never talked with him about it; it was all done in writing. He wasn't there when I deeded it to him. There was an agreement as to the price of the farm with him; it was forty dollars an acre. None of those incumbrances have been paid, nor any part of them—yes; a part of one has been paid. There was a mortgage of $500 to the school commissioner of La Salle county, that was dated October, 1852. I think, and remains wholly unpaid. There was a mortgage
110 to John Houston, and transferred to Milton H. Swift, for $1,125, wholly unpaid. That, I think, was in 1853. Then there was another of $1,800 to Charles Parse, dated January 1st, 1856. for borrowed money, and all unpaid. In April 3d, another of $1,600 to the same party, for borrowed money. He is not related to me. May 5, 1857, I gave Mr. Richardson a mortgage for $6,500 on the same piece of land; $4,500 of that remains unpaid for endorsements on my paper—two notes, I think—dated in April, 1857, to Beebe, Richardson & Co., of Boston, amounting to $2,394 87, which are unpaid. There was a note to Calvin Lowell, a farmer, for borrowed money for $700; that is extended and unpaid; then there is one to Joseph Cookson for $570; that is extended and unpaid. There is one to Bazillde Jewett, a farmer, for $425; that is unpaid; and one other to Atwood, Farmer & Barnes, for $432, unpaid. He was also endorser on various other notes that have been taken up, paid by me. These notes were not named in the mortgage to him. It was a simple mortgage due him so much. In making up the price to
111 Williams at forty dollars an acre, this mortgage was reckoned at its full face, $6,500; Williams bought this of me in August, 1857. There were no notes on which Richardson was endorser paid by me between the time I gave the mortgage to Richardson and the time I sold to Williams. I think, I can't say, that I received a letter from Williams, offering to give me $40 an acre for my farm; I think I wrote to him proposing to sell it for that, and he accepted my offer, and after that he paid my draft for the difference between the incumbrances and that. A man by the name of Bathin is on the farm; he pays a share of the crops; he is under lease from me that has two years to run yet. I received the crop last year; I reserved them; I haven't been on the farm since last July. Since this suit was commenced I have had a ca. sa. served upon me, and since there was an injunction. I know it now. I didn't know it then. I didn't know it till about ten days ago. I can't say how long after this suit was commenced it was that the ca. sa. was served upon me; it appears to me that it was a week or ten days; it was before the county court of Cook
112 county. Wm. Richardson was appointed assignee in that case; the other defendant in this case. I turned over to him notes, and judgments and accounts; the amount, was I think, was between

four and five thousand dollars; some of it was good, including some Iowa land too—two hundred and forty acres in Guthrie county. I had not, at the time the proceeds in this cause was served upon me, any notes, accounts, property, or real estate, in this or any other State or Territory, or rights of property, other than what I have named in my schedule to the county court of Cook county.

The debt in the ca. sa. proceeding was settled by Wm. Richardson and my wife; I can't say whether I disclosed this proceeding in that case to the court, but my impression is that I did not. Defendant wishes to state that the sale of goods to Richardson bona fide and for a full consideration, and he parted with all his interest in it honourably and fairly.

C. G. MILLER.

Subscribed July 13, 1858.

J. T. MOULTON, *Master, &c.*

113 All of which is respectfully submitted.

J. T. MOULTON.

Master in Chancery, U. S. Cir. Court N. Dist. of Illinois.

Endorsed: Filed March 7, 1860.

WM. H. BRADLEY, *Cl'k.*

And afterwards, to wit, on the 27th day of December, A. D. 1860, comes Edward S. Mills and Newell Bliss, by Smith & Dewey, their solicitors, and files their petition in the words and figures following, to wit:

UNITED STATES OF AMERICA:

Circuit court of the United States for the seventh circuit and northern district of Illinois.

EDWARD S. MILLS, NEWELL BLISS, complainants,
vs.
CHARLES G. MILLER, WILLIAM C. RICHARDSON, def'ts. } In chancery.

To the honorable circuit court, &c.

The petition of Edward S. Mills and Newell Bliss repectfully represent, that on or about the twenty-sixth day of April, eighteen hundred and fifty-eight, they filed their bill in this honorable
114 court, on the chancery side thereof, against Charles G. Miller, a judgment debtor, and William C. Richardson, his assignee, for the purpose of compelling a discovery of property and to reach the equitable assets of the said defendant Miller.

Your petitioners further represent, that such proceedings were had in this suit as to obtain the answers of the said defendant; and from the answer of said Miller it appears that a short time prior to the assignment of said Miller to said Richardson of his property and effects, said Miller had conveyed to one Robert S. Williams, of Pittsburg, a citizen of the State of Pennsylvania, who was then a

son-in-law of said Miller, certain real estate, situate in the city of Ottawa, in the State of Illinois, described as follows: Lots eight, nine, thirteen, and fourteen, in block seventy-nine, in State's addition to Ottowa.

Your petitioner further represents, that they have good reason to believe that Richard S. Williams was not a bona fide purchaser of the property so conveyed, and that said Miller conveyed the same
115 to said Williams to prevent the same from being reached by the creditors of said Miller, and that the transfer was fraudulent and void as to your petitioners.

Your petitioners, therefore, ask leave to amend their bill of complaint filed in this suit, making the said Robert S. Williams party-defendant in this suit, that the charges in said bill against said Miller as to his conveying property to stand in said bill as amended to all the defendants, that the bill of complaint may be further amended by inserting a description of the property so conveyed by said Miller to said Williams.

Your petitioners further ask that the defendant Miller may be required to make further answer to said bill touching the conveyance to said Williams of said property and all other property to whomsoever.

And your petitioners will ever pray, &c.

EDWIN S. MILLS,
NEWELL BLISS,
Per E. S. SMITH.
SMITH & DEWEY, *Compl't's Sol's.*

116 Endorsed: Filed Dec. 27, 1860.
WM. H. BRADLEY, *Cl'k.*

And afterwards, to wit, on the 27th day of December, A. D. 1860, in the record of the proceedings of said court in said cause is the following entry, to wit:

EDWARD S. MILLS and NEWELL BLISS
v.
CHARLES G. MILLER and WILLIAM C. RICHARDSON. } Chancery.

Now come the complainants, by Smith and Dewey, his solicitors, and on petition filed, moves the court for leave to amend the bill, by making Robert S. Williams a party defendant herein.

And afterwards, to wit, on the 28th day of December, A. D. 1860, the complainants, by their solicitor, file the following amendment to their bill of complaint, in the words and figures following, to wit:

Circuit court of the United States for the seventh circuit and northern district of Illinois.

117 EDWARD S. MILLS and NEWELL BLISS
v.
CHARLES G. MILLER and WILLIAM C. RICHARDSON. } In chancery.

Dec. 27, 1860, order allowing complainants to amend the bill of complaint.

Complainants amend the bill filed in this case as follows:

After the word "district," in sixth line from top, insert the following: and Robert S. Williams of Pittsburg, who is a citizen of the State of Pennsylvania.

Also after the words "orators, said judgment," on the fourth page, insert the following:

And your orators further show that upon information and belief, that the said Robert S. Williams at the time of filing this bill, had and held the title to lots eight, nine, thirteen and fourteen, in block seventy-nine, in State's addition to Ottawa, which lots in fact were the property of Charles G. Miller, and conveyed to said defendant Williams by said Miller for the purpose of preventing the
118 creditors of said Miller from reaching the same. Also amend the bill of complaint, by inserting on last page after the word "Richardson," where it last occurs, the words Robert S. Williams.

Endorsed. Filed Dec. 28, 1860.

WM. H. BRADLEY, *Clk.*

And afterwards, to wit, on the 13th day of July, A. D. 1861, in the record of the proceedings of said court in said cause is the following entry, to wit:

EDWARD S. MILLS AND NEWELL BLISS
v.
CHARLES G. MILLER, WILLIAM C. RICHARDSON, and ROBERT S. WILLIAMS. } Chancery.

This cause having been brought on to be heard upon the pleadings and proofs in the case, and it appearing to the court now here that the complainants' bill was filed in this cause on the twenty-sixth day of April, eighteen hundred and fifty-eight, and that at the October term of this court for the year eighteen hundred and
119 fifty-seven the complainants recovered a judgment against the said defendant, Charles G. Miller, for the sum of six hundred and seventy dollars and twenty-one cents, which still remains due and wholly unpaid; that the said defendant Charles G. Miller had and owned, at the time of filing of this bill, and still has and owns, property and effects; that sometime in August, eighteen hundred and fifty-seven, the said defendant Charles G. Miller made a transfer to said William C. Richardson of his stock of goods, wares and merchandize, notes and accounts, as collateral security to claims and demands which the said Richardson held against the said Miller: Now, therefore, on motion of E. S. Smith, solicitor for the complainants, it is ordered, adjudged, and decreed, that the complainants do recover of the said defendant Charles G. Miller the sum of six hundred and seventy dollars and twenty-one cents, and all subsequent costs in the case, together with interest from the twenty-third day of November, eighteen hundred and fifty-seven, that being the date

of the rendition of said judgment, together with the complain-
120 ants' costs in this suit to be taxed. And it is hereby further ordered, adjudged, and decreed, that J. Tilden Moulton, the master in chancery of this court be, and he hereby is, appointed receiver of all the goods, chattels, property, equitable interests, and things in action of the said Charles G. Miller, and of the said defendant William C. Richardson, as hereinafter mentioned and decreed to be assigned said receiver. And it is further ordered and decreed, that the said defendant Charles G. Miller, within ten days after notice of this decree, appear before the said receiver and assign, transfer, and deliver over to said receiver, on oath, all property, real and personal, belonging to him at the time aforesaid, whenever the same may be situated, and all his equitable interests, things in action, book of accounts, bonds, bills, notes, and effects, and all books, papers, and vouchers relating thereto, and that upon like notice the said defendant William C. Richardson appear before the said receiver and assign, transfer, and make over to said receiver, on oath, all property in his hands, both real and personal, and all equitable interests, bills, bonds, notes, and accounts,
121 things in action, and effects, and books, papers, and vouchers relating thereto which remain in his hands, under and by virtue of said transfer, which shall remain after the payment of his said claims against the said Miller, and costs, disbursements, and reasonable compensation, and that they and each of them appear before the said receiver from time to time, as said receiver shall direct, and produce such books, papers, and vouchers, and submit to such examinations as said receiver shall direct in relation to any matters which may be legally required of under the pleadings in this case. And it is further ordered and decreed, that the said receiver be, and he hereby is, authorized and empowered to appropriate all moneys received by him to the payment of the amount due the complainants as aforesaid, and to sell and dispose of the property assigned to him as hereinbefore directed, upon giving due and proper notice thereof, and apply the proceeds thereof in payment of the amount aforesaid, and if any surplus remains, to bring the
122 same into court to abide such order as may be made in respect thereto, and that said receiver make report of his proceeding in the premises to this court with all convenient dispatch.

It is further ordered and adjudged, that as to the defendant, Robert S. Williams, the bill in this case be and the same is hereby dismissed.

123 The plaintiff's counsel then objected to the bill and proceedings, because it did not refer, by description, to the property in question, and they were admitted, subject to the objection.

The defendant, to further maintain the issue on his part, offered and gave in evidence an instrument in writing, which is as follows:

This indenture, made this twenty-sixth day of July, A. D. 1861, between Charles G. Miller, of the first part, and J. Tilden Moulton, receiver of the estate and effects hereinafter referred to, of the second part: whereas, in and by an order of the United States circuit court

for the seventh judicial circuit and northern district of Illinois, in a certain case, wherein Edwards S. Mills and Newell Bliss were complainants, and the said Charles G. Miller and one William C. Richardson were defendants, it was ordered that the said J. Tilden Moulton, the said party of the second part, be, and he was thereby, appointed receiver of the estate, property, things in action, and effects of the defendant Charles G. Miller, with the usual powers and authority of receiver in like cases. And it was further ordered, that
124 the above named party of the first part, defendant as aforesaid, assign, transfer, and deliver to such receiver on oath, under the direction of said receiver, all property, money, equitable interest, things in action, estate, and effects of the above named defendant Charles G. Miller, with all books and papers relating thereto, and the evidence thereof:

Now, this indenture witnesseth, that the said party of the first part, in obedience to the said order, and in consideration of the premises, and the sum of one dollar to him in hand paid, by the said party of the second part, have conveyed, assigned, transferred, and delivered over, and by these presents do convey, assign, transfer, and deliver over, unto the said party of the second part, under the direction of the said receiver, all the following described real estate, to wit: lots No. eight, (8,) nine, (9,) thirteen, (13,) fourteen, (14,) in block seventy-nine, (79,) in the State's addition to the town of Ottowa, now the city, of Ottowa, State of Illinois, together with all and singular the buildings, appurtenances, and hereditaments thereto belonging, subject to the rights which he, the said party of the first part,
125 may have under the homestead law of said State, and also all estate, real and personal, chattles real, moneys, outstanding debts, things in action, equitable interests, property, titles, bonds, notes, accounts, and effects whatsoever, and wheresoever situated, of, or belonging, or due to the said party of the first part, or in which he, the said Miller, had any interest, right, title, or interest at the time of the commencement of the above named action in said court, which was on the 26th day of April, A. D. 1858; and also all deeds, writings, leases, muniments of title, bills, notes, books of accounts, papers, vouchers, and other evidence whatsoever, relating or appertaining thereto: to have and to hold unto him, the said party of the second part, as such receiver as aforesaid, and his successors and assigns, subject to the present and future order, direction, and control of the said court in relation thereto.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above mentioned.

C. G. MILLER. [SEAL.]

In presence of—

———— ————.

STATE OF ILLINOIS,

Cook County, ss:

I, Miles Almy, a notary public in and for the city of Chicago,
126 in said county and State, do hereby certify that C. G. Miller,

who is personally known by me to be the same person whose name is subscribed to the annexed deed, appeared before me this day in person, and acknowledged that he executed the said instrument of writing as his free act and deed, for the uses and purposes therein expressed.

[SEAL.] Given under my hand and notarial seal, this 26th day of July, A. D. 1861.

MILES ALMY,
Notary Public.

1473.

STATE OF ILLINOIS,
La Salle County:

I hereby certify that this instrument of writing was filed for record Aug. 26, 1861, at 8 o'clock a. m., and duly recorded in book 80, page 1 and 2.

A. B. MOORE, *Cl'k.*

The defendant also gave in evidence an instrument in writing, which is as follows:

This indenture, made this twenty-third day of August, one thousand eight hundred and sixty-one, between J. Tilden Moulton,
127 of the city of Chicago, county of Cook, and State of Illinois, party of the first part, and James M. Benedict, of the city, county, and State of New York, party of the second part, witnesseth:

Whereas, by a decree in chancery, dated the thirteenth day of July, A. D. 1861, entered in the circuit court of the United States for the seventh circuit and northern district of Illinois, wherein Edmund S. Mills and Newell Bliss are complainants, and Charles G. Miller and William C. Richardson are defendants, it was ordered, adjudged, and decreed that the said Charles G. Miller assign, transfer, and deliver over to the said J. Tilden Moulton, receiver, (so appointed by the court of chancery in said decree,) all his property, equitable interests, things in action, and effects, real and personal, and all books, papers, and vouchers relating thereto; and in which decree it was ordered that the said William C. Richardson assign, transfer, and deliver over to said J. Tilden Moulton, receiver, all the property, equitable interests, things in action, money, and effects in his hands, by virtue of an assignment made by said Charles G.
128 Miller to said William C. Richardson, sometime in August, A. D. 1857; and all books and papers and vouchers relating thereto, and all the avails or proceeds of such property:

And whereas the said Charles G. Miller did, on the twenty-sixth day of July, A. D. 1861, in obedience to said decree, assign, transfer, and deliver to the said J. Tilden Moulton, receiver, the real estate hereinafter described, and all the personal effects, equitable interests, things in action, moneys, outstanding debts, title bonds, notes, accounts, whatsoever and wheresoever situated, of, or belonging, or

due to the said Charles G. Miller, or in which he had any interest in whatsoever on the 26th day of April, A. D. 1858:

And whereas, in obedience to an order in said decree, the said J. Tilden Moulton, receiver aforesaid, and party of the first part to this indenture, did, on the twenty-third day of August, A. D. one thousand eight hundred and sixty-one, sell, at public auction, at the court-house door, in the city of Ottowa, county of La Salle and district aforesaid, the following described property, having first published a notice of said sale in the "Ottawa Republican," a
129 weekly newspaper, published at Ottawa, in La Salle county, and State of Illinois, at least twenty days prior to the day of sale, to wit: all the personal effects, monies, things in action, equitable interests, title bonds, notes, accounts received by me from said Charles G. Miller to the said James M. Benedict, the said party of the second part therein, for the sum of five dollars, that being the highest and best bid therefor. Also, the following described real estate, situated in the county of La Salle and State of Illinois, to wit: lots eight, (8,) nine, (9,) thirteen, (13,) and fourteen, (14,) in block seventy-nine, (79,) in the State's addition to the town, now city, of Ottawa, together with all and singular the buildings, appurtenances, and hereditaments thereto belonging, subject to the rights which said Charles G. Miller may have under the homestead law of said State, to James M. Benedict, said party of the second part herein, for the sum of five hundred dollars; that being the highest and best bid therefor: Now, therefore, this indenture witnesseth, that the said J. Tilden Moulton, receiver as aforesaid, and party of the first part herein, in order to carry into effect the said sale so made, in pursuance of the decree of said court, and in consid-
130 eration of the premises and of the sum of five hundred and five dollars, paid by the said party of the second part to the said J. Tilden Moulton, receiver as aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, released, conveyed, and confirmed, and by these presents does grant, bargain, sell, alien, release, convey, and confirm unto the said party of the second part, his heirs and assigns forever, all and singular, every part and parcel of the foregoing described premises, both personal and real, together with all and singular the appurtenances thereunto belonging or in any way appertaining. to have and to hold the same, all and singular, the said premises above described and hereby granted and conveyed, or intended so to be, unto the said party of the second part, his heirs and assigns forever.

In witness whereof, the said J. Tilden Moulton, receiver as aforesaid, has hereunto his hand and seal subscribed, and set the day and year first above written.

J. T. MOULTON. [SEAL.]

In presence of—
P. A. HOYNE,
F. J. FRENCH.

653.

131 STATE OF ILLINOIS,
County of Cook, City of Chicago, ss:

I, Philip A. Hoyne, a notary public in and for the city of Chicago, in the county of Cook, and State of Illinois, do hereby certify, that J. Tilden Moulton, personally known to me as the same person whose name is subscribed the foregoing deed as receiver, appeared before me this day in person, and acknowledged that he signed, sealed, and delivered the said deed as such receiver, as his free and voluntary act, for the uses and purposes therein set forth.

[SEAL.] In witness whereof, I have hereunto set my hand and notarial seal, this thirteenth day of November, A. D. 1861.

PHILIP A. HOYNE,
Notary Public.

The defendant then called, as a witness Cornelius K. Smith, who, being duly sworn, testified that he resided at Ottawa since 1856; knew C. G. Miller, the defendant, since that time; the defendant has a family, wife and children, and was then residing in the house
132 on the lots in question, and had resided in the house upon the property with his family ever since he knew Miller, in 1856; that the defendant occupied the house or property as his homestead. [It was admitted that the defendant in this case was a party def't in the chancery suit in La Salle county, and also a party def't in the chancery suit in this court.]

The defendant here rested the case on his part, whereupon the plaintiff recalled William H. Bushnell, who said he had a conversation with E. S. Smith, defendant's attorney, in which Smith said the bill for Mills & Co. was filed to reach the personal property and notes and accounts, which Miller had transferred. To question by defendant's counsel, the witness said the conversation was soon after suit commenced in La Salle co. cir. court, by Lyon & Co. [It was admitted that Mr. Helm, the counsel of the plaintiff, before the bill was filed in the La Salle circuit court, knew of the filing of the bill in this court, but that he obtained information of the character of the conveyance from the defendant to Williams from another source, and not from the proceedings in the chancery suit in this
133 court.]

The proofs in the case here closed.

The counsel for defendant then stated to the court, that he claimed for the defendant, and asked the court to instruct the jury upon the law in substance as follows:

1st. By filing the bill by Mills and others against Miller in this court and service of process, they obtained a lien upon all the property and effects of Miller, which lien had by the decree and sale of the receiver passed into a title in Benedict, which title related back to the service of process, and had become paramount to the title of the plaintiff.

2d. That in the proceedings by the judgment creditors, this court in chancery had jurisdiction of the person and property of Miller,

and no proceeding of the State court could interfere with the property, nor obtain jurisdiction thereof, to give the plaintiff any title as against Benedict, the purchaser, at the receiver's sale.

134 3d. That because of the proceedings, decree, and sale by the receiver in this court in the suit by Mills and others, Benedict had acquired a good title to the land as against the plaintiff.

4th. That the defendant was entitled to a homestead right under the laws of the State of Illinois, in such cases made and provided, which he could set up as a defence in this case.

The court refused each and all the foregoing instructions asked by the defendant, but, on the contrary, instructed the jury that the decree and proceeding, in the La Salle circuit court were, as to the defendant, conclusive as to the conveyance made by him to Williams, and that whatever title he had at that time was divested by the proceedings in the said La Salle circuit court, and the deed made by the master and the confirmation thereof. And the court further instructed the jury, that the defendant could not in this case, under the circumstances, set up the supposed title in Benedict as a paramount outstanding legal title, to defeat the title of the plain-

135 tiff; to which opinion of the court, in refusing the said instructions, and each of them, and in instructing the jury as aforesaid, the defendant then and there excepted.

THOMAS DRUMMOND. [SEAL.]

Endorsed: Filed June 13, 1862.

WM. H. BRADLEY, *Cl'k.*

136 And afterwards, to wit, on the 18th day of July, A. D. 1862, the said defendant, by his attorney, comes and files his writ of error and appeal bond, in the words and figures following, to wit:

Writ of error.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to the judges of the circuit court of the United States for the northern district of Illinois, greeting:

Because in the record and proceedings as also in the rendition of a judgment in a plea which is in the said court before you between Jameson C. Sherry and against Charles G. Miller, a manifest error hath happened to the great damage of the said Charles G. Miller, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with

137 all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and

proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Roger B. Taney, chief justice of the Supreme Court of the United States, this eighteenth day of July, in [L. S.] the year of our Lord one thousand eight hundred and sixty-two, and of our independence the 87th year.

WM. H. BRADLEY, *Clk.*

Filed July 18, '62.

WM. H. BRADLEY, *Clk.*

Appeal bond.

Circuit court of the United States for the seventh circuit and northern district of Illinois.

138 JAMESON C. SHERRY *vs.* CHARLES G. MILLER. } In error.

Know all men by these presents, that we Charles G. Miller, of Ottawa, in the county of La Salle and State of Illinois, and Ezekiel S. Smith, of Chicago, in the county of Cook and State of Illinois, are held and firmly bound unto the above-named Jameson C. Sherry in the sum of one thousand dollars, lawful money of the United States, to be paid to the said Jameson C. Sherry, his executors or administrators. To which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals and dated this tenth day of July, A. D. 1862.

Whereas the above-named Charles G. Miller hath prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above-entitled cause by the circuit court of the United States for the seventh circuit and northern district of Illinois: Now therefore, the condition of this obligation is such, that if the above-named Charles G. Miller shall prosecute his
139 said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

C. G. MILLER. [SEAL.]
E. S. SMITH. [SEAL.]

Sealed and delivered in the presence of—
WOODRUFF MOREY.

Endorsed: Approved.

THOMAS DRUMMOND.

Filed July 18, 1862.

W. H. BRADLEY, *Clk.*

And afterwards, to wit, on the 2d day of December, A. D. 1862, the said defendant filed the citation in this behalf, in the words and figures following, to wit:

Citation.

UNITED STATES OF AMERICA, *ss:*

To Jameson C. Sherry, greeting:

You are hereby cited and admonished to be and appear at
140 a Supreme Court of the United States, to be holden at Washington, on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eighth circuit and northern district of Illinois, wherein Charles G. Miller is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness this 29th day of November, A. D. 1862.

THOMAS DRUMMOND.

I hereby accept service by copy of the above citation this 29th day of November, A. D. 1862.

HELM & CLARK,
Att's for JAMESON C. SHERRY,
Def't in Error.

Endorsed: Filed Dec. 2d, 1862.

W. H. BRADLEY, *Cl'k*,

141 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for the northern district of Illinois, do hereby certify the foregoing to be a full, true, and complete transcript of the record and proceedings had in the cause wherein Jameson C. Sherry was plaintiff and Charles G. Miller defendant, as the same appears from the record of said cause now remaining on file in my office.

In testimony whereof, I have hereunto set my hand and
[SEAL.] affixed the seal of said court, at office in Chicago, this 6th day of December, A. D. 1862, and of our independence the 87th year,

WM. H. BRADLEY, *Cl'k.*

142 Supreme Court of the United States of America, of the December term, A. D. 1862.

CHARLES G. MILLER, plaintiff in error,	Error to the circuit court of the United States for the northern district of Illinois.
vs.	
JAMESON C. SHERRY, defendant in error.	

Assignment of errors.

And afterwards, to wit, on the first Monday of December in this same term, before the justices of the Supreme Court of the United

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States of America, comes the said Charles G. Miller, by E. S. Smith, his attorney, and says that in the record and proceedings aforesaid and also in giving the judgment aforesaid, there is manifest error in this, to wit:

1st. The court erred in admitting the record, decree, and proceedings in the La Salle county circuit court, as evidence of plaintiff's title.

2d. The court erred in refusing to give to the jury the instructions asked by the defendant, numbered one, two, three and four.

3d. The court erred in its instructions to the jury.

4th. The court erred in refusing to grant a new trial to the defendant, and in giving judgment for plaintiff in the court below.

And the said Charles G. Miller prays that the judgment aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and for naught held, and that he may be restored to all things which he has lost by reason of said judgment.

By his attorney:

E. S. SMITH.

Filed 3d January, 1863.

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IN THE

Supreme Court of the United States,

No. 227.

CHARLES G. MILLER,
Plaintiff in Error,
v.
JAMESON C. SHERRY,
Defendant in Error.

Ejectment.

ARGUMENT OF E. S. SMITH,

For Plaintiff in Error.

CHICAGO:
BEACH & BARNARD, PRINTERS, 14 SOUTH CLARK ST.
1864.

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IN THE

UNITED STATES SUPREME COURT.

DECEMBER TERM, 1863.

No. 227.

CHARLES G. MILLER,
Plaintiff in Error,
v.
JAMESON C. SHERRY,
Defendant in Error.

Ejectment.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

E. S. SMITH,

Solicitor and Counsel for Plaintiff.

CHICAGO:
BEACH & BARNARD, PRINTERS, 14 SOUTH CLARK STREET.
1864.

STATEMENT OF THE CASE.

This was an action of ejectment, brought by the defendant in error, in the court below, to recover lots 8, 9, 13 and 14, in block 79, in the State's addition to the town (now city) of Ottawa, in La Salle county, Illinois.

Declaration served Feb. 5, 1861, and filed, and order to plead, Feb. 15, 1861.

Defendant filed plea of general issue.

The common source of title was from the plaintiff in error, and to maintain the suit, on the part of the plaintiff below, a copy of a record, in the case of William H. Lyon and Warren Lyon against Charles G. Miller, the plaintiff in error, Eliza Miller, his wife, William C. Richardson, Robert S. Williams and Mary Ann Williams his wife, was filed in the Circuit Court for the county of La Salle, in chancery. The suit was what is called a creditor's suit, upon judgment and return of execution unsatisfied.

This record shows that the bill was filed February 15, 1859, and summons served on Miller February 21, 1859, and on Richardson and Eliza Miller March 25, 1859, and on Robert S. Williams April 1, 1859, and Mary Ann Williams not found (p. 15 record).

The bill was an ordinary creditor's bill, setting up the recovery of a judgment and return of execution unsatisfied; that Miller had been a merchant, and had divers debts due to him; that he had divers goods, wares and merchandise, and other articles of personal property; and was the owner, or interested in, real estate and in stocks, &c.

The bill also charged, among other things, that in April, 1859, Miller conveyed to Robert S. Williams said lots 8, 9, 13 and 14; that Miller, at the time of the conveyance, and at the time of filing the bill, with his family, resided upon the property; that the conveyance was made to hinder, delay, and defraud the creditors of said Miller.

The bill prayed that the conveyance might be declared void and that the property might be sold by a commission appointed for said purpose, and that the judgment be paid out of proceeds, &c. (p. 6 to 14, inclusive, record).

November 14, 1859, Miller filed his answer, denying the fraud charged, and admitted judgment, and return of execution, and the conveyance to Williams, averring it was for a consideration &c. (p. 16, record).

November 26, 1859, Richardson answered generally, and denied all fraud and unlawful combination (p. 23, record).

December 1, 1859, Williams answered generally, and denied all fraud, &c. To these answers replications were filed.

December 18, 1859, the bill was dismissed as to the defendant, W. C. Richardson.

July 11, 1860, default of Eliza Miller and Mary Ann Williams was entered, and a decree on that day also entered (p. 30 and 31, record).

The decree was in ordinary form, and, among other things, stated that, it appearing to the court that Charles G. Miller was, on the 6th day of April, 1857, indebted to the complainant, and was then the owner of lots 8, 9, 13 and 14, in block 79, and did, on that day, convey the lots to said Robert S. Williams, without any consideration, and that the same were conveyed by said Miller, and received by said Williams, and by him held, with intent to hinder, delay

and defraud the creditors of said Miller, &c., and that the same had been used, occupied, and enjoyed by said Miller, &c., it was ordered, adjudged and decreed, that the conveyance of said lots 8, 9, 13 and 14, from said Miller to said Williams, was made to hinder and delay complainants, *and other creditors of said Miller*, and was, for that reason, as against the complainants, void. It was further decreed that, as against the complainants, *and the other creditors of Charles G. Miller each and every of the said lots was and is the property of the said Charles G. Miller.*

It was further ordered, adjudged, and decreed, that said Miller pay said complainants the amount of said judgment within thirty days after the last day of the then term of said court, and in default of said payment the Master in Chancery be, and is, directed, after advertising said lots, to offer and expose to sale and to sell to the highest bidder, for cash, the whole of said lots, or so much thereof as may be necessary to satisfy, in full, the costs and the amount of the judgment, &c.; and to execute to the purchaser a deed, &c.; and that said sale shall bar and divest of all, and all manner of, interest, or right, or equity, or right of redemption, which Charles G. Miller had, or any of the said defendants may have in or to the said property, or any part thereof (p. 31 and 32, record).

March 1, 1862, the Master's report of sale was confirmed by the court. This was one year after the suit in ejectment was commenced (p. 33, record).

The defendant in error, to further maintain his suit, gave, in evidence, a Master's deed upon the decree, which deed was dated September 15, 1860, by which the land was conveyed to William H. Bushnell, also, a deed from Bushnell to the defendant in error, dated February 4, 1861 (p. 35, 36 and 37, record).

The defendant in error proved by Bushnell, a witness, that the property was worth $2,500.

BY DEFENDANT.

The defendant gave, in evidence, the record of a proceeding and decree upon a creditor's bill, in the Circuit Court of the United States for the Northern District of Illinois; in which Edward S. Mills and others were complainants, and Charles G. Miller, William C. Richardson and Robert S. Williams were defendants; said Williams being made a party, defendant, by an amendment to the bill. The bill was filed April 27th, 1858, near ten months prior to the filing of the bill, by Lyon, in the State court (p. 39, record).

April 26th, 1858, subpena issued and served, and notice for motion injunction, on May 4th, 1858 (p. 47 & 48).

June 3, 1858, an order was entered for a personal examination of Miller, orally, before Master in Chancery (p. 48).

June 5, 1858, Wallace entered appearance for Miller and Richardson (p. 49).

July 13, 1858, C. G. Miller examined, orally, before I. T. Moulton, Master, and taken in writing (p. 49 to 52).

The bill, in this case, was an ordinary judgment creditor's bill, setting up that Miller had equitable assets, and made fraudulent transfer of property, and had real estate, or interest in real estate, but did not describe any specific price of real estate, which he had, or in which he had an interest; but stated generally, as usual in such bills, praying discovery and relief.

The examination, July 13, 1858, discovered the lots 8, 9, 13 and 14, in block 79 as conveyed to Williams; after which Williams was made a party, defendant, but not served, as he was absent, and not residing in the State. The bill, in this case, was filed and subpena served, about ten months prior to the bill of Lyon, in the State court; and Miller made discovery, before the Master, of the lots, and a part of the record in the case, near eight months prior.

July 13, 1861, a decree was had in this suit, in the said Circuit Court for the Northern District of Illinois, by which it was decreed, among other things, that complainant should recover, and Miller deliver over, on oath, and convey to a receiver, appointed, all property, personal and real, and equitable assests. Moulton appointed a receiver, and by the decree, ordered to sell the property assigned and convey the same to the purchaser (p. 54).

July 6, 1861, Miller conveyed, persuant to the decree, to the receiver, lots 8, 9, 13 and 14, block 79, which conveyance was executed according to law.

August 3, 1861, Moulton, the receiver, made sale, pursuant to the decree, and conveyed the lots, 8, 9, 13 and 14, to James M. Benedict, (p. 57), both deeds given in evidence.

The defendant proved by C. K. Smith, a neighbor, who testified that he had known Miller since 1856, and that he had a wife and children, and was then residing in the house, on the lots in question, and had resided in the house, upon the property, with his family ever since he knew him, in 1856; that he was a householder and the the head of a family, and that he occupied the house and property as his homestead (p. 59).

Defendant's counsel then asked the court to instruct the jury as follows:

1. By filing the bill by Mills and others against Miller, in this court, and service of process, they obtained a lien upon all the property and effects of Miller; which lien, had by the decree and sale of the receiver, passed into a title in Benedict, which title related back to the service of process, and had become paramount to the title of the plaintiff.

2. That in the proceedings by the judgment creditors, this court, in chancery, had jurisdiction of the person and property of Miller,

and no proceeding of the State court could interfere with the property, nor obtain jurisdiction thereof, to give the plaintiff any title as against Benedict, the purchaser, at the receiver's sale.

3. That because of the proceedings, decree, and sale by the receiver in this court, in the suit by Mills and others, Benedict had acquired a good title to the land as against the plaintiff.

4. That the defendant was entitled to a homestead right under the laws of the State of Illinois, in such cases made and provided, which he could set up as a defence in this case.

The court refused each and all the foregoing instructions asked by the defendant; and instructed the jury that the decree and proceedings in the La Salle Circuit Court, were, as to the defendant, conclusive as to the conveyance made by him to Williams, and that whatever title he had, at that time, was divested by the proceedings in the said La Salle Circuit Court, and the deed made by the Master and the confirmation thereof And the court further instructed the jury, that the defendant could not in this case, under the circumstances, set up the supposed title in Benedict as a paramount outstanding legal title, to defeat the title of the plaintiff; to which opinion of the court, in refusing the said instructions, and each of them, and in instructing the jury, as aforesaid, the defendant then and there excepted.

ERRORS ASSIGNED.

1. The court erred, in admitting the record, decree and proceedings in the La Salle County Circuit Court, as evidence of the plaintiff's title.

2. The court erred, in refusing to give to the jury the instructions asked by the defendant, numbered one, two, three and four.

3. The court erred in its instructions to the jury.

4. The court erred, in refusing to grant a new trial to the defendant; and in giving judgment for plaintiff in the court below.

PLAINTIFF'S POINTS.

I.

The defendant in error failed to show such title in the trial in the court below as would enable him to recover in an action of ejectment.

II.

Mills and others, in filing their bill and service of process, in the Circuit Court of the United States for the Northern District of Illinois, as judgment creditor's against Miller, the defendant in error, acquired a lien, and right to reach all the debtor's property and effects at the time of service, through the court, upon that proceeding; and being followed by a decree and transfer of the property by the debtor to Moulton, a receiver appointed by the decree, and a sale, by the receiver, and conveyance to Benedict, the purchaser, a title was acquired, which became paramount to the title of the defendant in error.

III.

The plaintiff in error, did show, on the trial, a homestead right in himself in the property, which could not be taken from him by any proceeding or decree of court, as long as the property remained his homestead, except in the manner pointed out by the statute; and such a right will defeat an action in ejectment, as against the legal title, unless obtained in the manner pointed out by the statute.

We submit copies of two sections of the Statute of Illinois: *Chapter* 21, *Section* 36: *Page* 142, *volume* 1, *Purple's Statutes of Illinois, as follows:*

"Whenever an execution shall have been issued against the "property of a defendant, on a judgment, at law or in equity, and

" shall have been returned unsatisfied, in whole or in part, the " party suing out such execution, may file a bill in chancery, against " such defendant and any other person, to compel the discovery of " any property or thing in action, belonging to the defendant; and " if any property, money, or thing in action, due to him, or held in " trust for him, and to prevent the transfer of any such property, " money, or thing in action, or the payment or delivery thereof to " the defendant, except when such trust has been created by, or the " fund so held in trust, has proceeded from, some other than the " defendant himself."

Section 37, *same chapter and page, is as follows:*

" The court shall have power to compel such discovery, and to " prevent such transfer, payment or delivery, and to decree satis- " faction of the sum remaining due on such judgments, out of any " personal property, money, or thing in action, belonging to the " defendant, or held in trust for him, with the exception above sta- " ted, which shall be discovered by the proceeding in chancery, " whether the same were originally liable to be taken in execution " or not. *Provided*, That no answer made to any bill filed under " this and preceeding section, shall be read in evidence against " the defendant on the trial of any indictment for the fraud charged " in the bill."

May it please the Court,

We have given, in the statement of the case, a pretty full history, with dates of the two chancery suits, and procedings therein, and the evidence in the court below, for the purpose of a correct understanding of the facts in the case, and will now proceed to consider the first point made for the plaintiff in error, as to the title of the defendant in error, which we claim was not such a title as would enable him to recover in an action of ejectment, and in presenting our views upon this point we will consider the question independent of all other questions in the case.

The defendant in error, to show title in himself, relied upon the creditor's bill of Lyon & Co., against Miller, Richardson and others, and the decree in the suit, and conveyance by Wallace, the Master, to Bushnell.

The proof showed that the legal title was in Williams at the time Lyon and others filed their bill in the LaSalle county circuit court, Miller (his wife not joining) having conveyed the lots to Williams about April 6, 1857, as alleged in the bill (fol. 21 and 22), and as stated in Miller's answer (fol. 34, page 16), and also stated in the answer of Williams (fol. 54, page 27).

The court, by its decree, states, that it further appearing to the court that Miller did convey to Williams, April 6, 1857, lots 8, 9, 13 and 14, in block 79, and that said conveyance was made without consideration, and to hinder, delay and defraud creditors, and was for that reason decreed to be void. It was further decreed that, as against the complainants and the other creditors of Miller, said lots were the property of said Miller (fol. 62, pages 31 and 32).

It was further decreed that Miller pay, &c., and in default the Master in Chancery sell the lots, and to execute to the purchaser deeds, &c (fol. 63, page 32).

The decree no where directs Williams or Miller to convey the title to the lots to the Master, or to the purchaser at the Master's sale; nor does the decree direct a commissioner, or any one, to convey for Williams or Miller to the Master or to the purchaser, so that the legal title would pass from Williams or Miller to the purchaser.

The decree set aside the conveyance from Miller to Williams, and declared the lots to belong to Miller; the title then stood in Miller. The decree should have directed that Miller convey to the Master, or to the purchaser at the Master's sale under the decree. A title cannot pass from one to the other by a decree of the court. The decree does not purport to declare the title in the purchaser.

The legal title was in Miller from the time of the decree declaring the conveyance from Miller to Williams void, and was not conveyed by Miller to the Master, nor to any one. The sale by the Master without conveyance from Miller did not convey the legal title to Bushnell. A court of equity can only compel the party to convey the legal title, and upon a sale thereby give the purchaser the legal title. The power of a court of equity to set aside a legal title upon the ground of fraud does not confer power to decree the legal title in another by operation of the decree. The title must be conveyed, and if the party refuse, the court can order that a commissioner convey the legal title for the obstinate party, so that the title will be perfected on the sale by the receiver or Master.

Courts of equity act upon the parties by decrees, and not upon the property, except through the party; that is, in all suits in equity, the primary decre is *in personam*, and not *in rem.* This was held to be the rule in the case of *Penn* v. *Lord Baltimore*, 1 Vesey, 444. The rule is stated to be the same in 2 Story's Eq. Jur. Pr., sec. 744.

In the case of *Willis* v. *Wilson*, 34 Miss. Rep. 357, the court says: The chancery court cannot, by its decree, divest the legal title to land out of one party and vest it in another. It is necessary in such cases to appoint a commissioner to convey.

In the case of *Murray* v. *Johnson*, 3 Kentucky Rep. (A. K. Marshall), 220, the court held that "the chancellor may decide on the "equitable right to have a transfer of the legal right of entry, and "may enforce a compliance with the decree, by compelling a con-"veyance, but until the conveyance is actually made, the right of "entry remains as it was before the decree."

In the case of *Proctor* v. *Ferebee* 1 Iredell Eq., 143, the court says, that a decree in equity cannot of itself divest a title at law to land; but can only compel the person who has the title, and who is mentioned in the decree to convey.

In the case of *Shepherd* v. *Ross Co. Com.*, 7 Ohio, 271, it was held that a decree does not of itself pass a title, but a deed has to be actually made, conveying the title, so that a sale by order of the court would convey the legal title. We do not think this case decides that the title could be conveyed by the officer of the court without a conveyance from the party holding it.

In the case of *Chatauque Co. Bank* v. *White*, 2 Seldon, Judge GARDNER, in his opinion, page 252, fully sustains the doctrine that the legal title must be conveyed. He says: "In all cases of fraud-"ulent trusts, the court may, in its discretion, direct a sale by a "master, and *compel the debtor and trustee to unite* in the convey-"ance to the purchaser, or it may order an *assignment to a receiver*, "as was done in this case, to the end that the property may be dis-"posed of under the special instructions of the chancellor; *or the* "*fraudulent conveyance may be annulled*, and the creditor permit-"ted to proceed to a sale upon his execution."

Several cases were referred to by the learned judge to show that such had been the ruling in other cases involving the same principle.

In the case of *Reed* v. *Livingston*, 3 J. Ch. Rep., 507, the Chancellor held that sufficient of the real estate should be sold by the Master to pay the debt, and that the party holding the title should also convey.

The case of *Edmanston* v. *Lyde & Walton*, 1 Paige, 637, was one where the title to land was held by one Buckner, who was not a party to the suit. Buckner had received the legal title by Sheriff's sale, as a security to cover advances made the defendants.

The bill was filed to reach the equitable estate and choses in action which could not be reached on execution at law. The Chancellor held that all the rights of the defendants could be sold under

a decree, and that the purchaser would be entitled to an assignment of the land from Buckner on paying the amount due him, and if he should unreasonably refuse to permit the purchaser to redeem, he might subject himself to the costs of a suit instituted for that purpose.

It seems unnecessary to take further time upon this point in the case, and submit, if the court please, that we have shown that the legal title must be conveyed by the party holding it, and in this case it did not pass from Miller to Bushnell by the Master's sale. The decree declared the transfer from Miller to Williams void; that the lots in question were the property of Miller, as to all his creditors, the effect of which left the title in Miller, the same as it would have been had he not given the deed to Williams. The decree directed the Master to sell the lots to make the money in case Miller did not pay within the time allowed, but the decree, as we have before stated, did not direct Miller to convey, to any one, nor did it declare the sale to be in effect a conveyance of the legal title. The most that can be said of the sale is that the purchaser obtained an equitable title and lien on the property, a right to redeem or to enforce a conveyance of legal title, subject to all the prior liens and rights of other creditors.

Bushnell did not acquire any greater title than the purchaser in the case of *Edmanston* v. *Lyde & Walton*, 1 Paige, 637; that is, an equitable title and right to redeem, and on refusal, to compel a transfer, as the Chancellor states on page 641 of that case.

We therefore claim that the defendant in error, not having paid the prior lien and claim of Mills & Co., to redeem and discharge the same, and not having taken any steps to enforce a conveyance of the legal title to the lots in question, which he might have done after the sale by obtaining a further order or decree, we say he entirely failed to show a title on which he could recover in an action of ejectment; most certainly he did not show the legal title to be in him; on the contrary, by his own proofs the title was shown to be in Miller absolutely.

Counsel may say that the sale by the Master gave such a title as entitled the plaintiff to recover as against Miller; that Miller was estopped from disputing the title so obtained against him; that the title as against Miller might be good, when at the same time it could not prevail against another. We do not believe that counsel will, before this court, assume such a position, and claim that such is the law. We will only say, upon this anticipated position of counsel, that we cannot find any case to sustain such doctrine.

If the defendant in error cannot recover, as against the world, upon the strength of his own title, he cannot recover against Miller, the plaintiff in error. No title short of the legal title, and an absolute title, will enable the defendant in error to recover the lots in question, and that title must be paramount to all others, and be free from all right of possession in Miller or his wife under the statute.

It may be said that because the bill in the case of Lyon and others, in the LaSalle county circuit court, containing the description of the lots more definitely than the bill of Mills and others, that such a description gave the bill and proceedings greater efficiency, and therefore the decree of the State court superceded that of the Federal court. Such was the doctrine contended for by the counsel in the court below, and may be renewed here. But, if the court please, we say, that as both of the cases being what is called creditor's bills, filed upon the return of an execution unsatisfied, praying for discovery and relief, there was no necessity of describing the land claimed to have been fraudulently conveyed by Miller. If a creditor, filing his bill without a return of execution unsatisfied, claims a specific lien by his judgment, and desires to remove the obstruction, then it is necessary to describe the land, so that the court can determine whether there be any specific lien upon the land described, as it is that for which the relief is sought, and it is the lien in such cases which gives jurisdiction to the court, because of the fraudulent obstruction or impediment upon the property described.

If the creditor levies his execution upon the real estate fraudulently conveyed, and then asks the aid of a court of chancery, to give to his execution levy full form and effect, to enable him to sell the legal title, and give the purchaser a title free from obstruction, then, most certainly, the property must be described and the facts of the levy and fraudulent obstruction must be stated, as it is that which gives the court jurisdiction of the case. Such seems to be the law, as the authorities show. The case in 3 Ark., 351, is perhaps, the first case, and in that the execution was in the hands of the sheriff, not levied. But it does not appear whether the bill did not state as a fact that the sheriff could not proceed because of the obstructions, which would have given the court jurisdiction of the case in aid of its process. We think in this country there is no doubt as to what the rule of law is in all the cases stated, and that we are justified in stating that in the case under consideration there was no advantage to be gained by a description of the land in the Lyon bill, which appears to be more full than the other. It was not because of any specific lien of the judgment, nor because an execution was in the hands of the officer, levied or not levied upon the lots, which gave jurisdiction in those cases. Most clearly the court had jurisdiction, because of the allegations in the bill that the property was beyond the reach of an execution at law; that the defendant had an interest in real estate fraudulently disposed of, and because the complainant had no definite knowledge as to the property and its condition, and the interest of Miller, that the discovery was asked, and when discovery was obtained by the answer of Miller, and the description of the property and condition of the title ascertained, then the court had power to subject the property to the payment of the debts in the manner best calculated to reach the object at the least expense.

If a creditor had all the knowledge as to the situation of the property and title which discovery would give them, there would be no need of asking discovery, and could proceed to effect a specific lien at once upon the property by levy of an execution. It is not necessary to refer to the condition of the case in which it might

have stood had Lyon's judgment been in another court, and had he taken an execution levied upon the lots, and then filed his bill in aid of that writ and levy. But we submit that, in such a case, Lyon would have only obtained the legal title, subject to the equitable title or lien secured by the bill of Mills and others. This is an important question in the West, and if it can be decided in this case, it may save much litigation. If it is to be held in cases of real estate and personal property, subject to levy, that after a bill filed on a return of execution unsatisfied, another creditor can take an execution and levy upon such property, and thereby defeat the bill, it will work a great wrong to the vigilant creditor, because judgment creditor's bills could be defeated every time, as it is impossible to obtain an injunction without notice, or obtain the appointment of a receiver and secure the possession of the property before another creditor, a friendly creditor, with whom the debtor might act could obtain his execution and levy upon the property. The attempt to do so, as we have shown in the Benedict case, not by execution, but by a proceeding in another form, is one direct act, if upheld, to show how a judgment creditor's proceedings on return of execution can be defeated in everything except as to choses in action and some equitable interests. Such interests in real estate in this, and many other States, can be taken on execution and sold, the same as the legal title, so that we see where a creditor seeks through the power of a court of chancery, on a return of execution, to reach property fraudulently conveyed by his debtor, may be entirely defeated by a proceeding, such as we have stated.

The case of *McElwain* v. *Willis*, 9 Wendell Rep. 549, is one where the complainant sought to reach real estate by bill in equity, and without a return of execution, and without alleging, in the bill, that the property was subject to the judgment, or execution, and without describing the property sought to be reached.

In this case, his Honor, Justice NELSON, on page 560, says: "The "ground of objection to the remedy sought, under this aspect of "the case, is the want of a sufficient allegation, in the bill, that the

" property, out of which the complainant seeks to collect his debt, " was subject to the judgment, or execution. There is no express " averment that the defendant had any real property, or whether " the personal property was liable to the execution or not, it was " left wholly to inference or conjecture. As this fact is essential to " give jurisdiction to the court, it should have been specifically " and formally alleged, and without it, no right to the remedy is " shown in the bill. It is a well settled principle in pleading, that " the facts which give jurisdiction to the court, and when that is " shown, give a right or title to the particular relief prayed for, " must be plainly and succinctly stated in the bill; and if not, the " defendant may demur (Cooper Plead. 5, 181). The allegation " that the personal property of the defendant was liable to be levied " on by execution, was not only essential to give jurisdiction, but " constituted a part of the title of the complainant to the relief " sought in this case."

Now, if the court please, we do not learn from this case, nor from the other cases referred to, that it is necessary to so describe the property, in cases of creditor's bills filed, after the remedy at law is exhausted; nor can we see, from principle, that it is necessary, in such cases, to describe the property, or allege any right to a specific lien on the property when discovered. The filing of the bill, on return of execution, gives to the complainant an equitable attachment upon all the property which may be discovered by the answer to the bill, to date from the filing and service of process, the same and as effectual as in cases of execution or judgment.

In the case of *Conrad* v. *Atlantic Insurance Company*, 1 Peter's Rep., 386, Justice STORY, on page 443, says: " Now, it is not un- " derstood that a general lien, by judgment on lands, constitutes, " *per se*, a property or right in the land itself. It only confers a " right to levy on the same to the exclusion of other adverse inter- " ests, subsequent to judgment; and when the levy is actually made " on the same, *the title of the creditor for this purpose relates back* " *to the time of his judgment, so as to cut out intermediate incum-* " *brances.*"

We submit that it is true, both upon principle and authority, that the title or right acquired by the filing of the bill and service of process, is as perfect and absolute as the right of a judgment lien given by statute; and when title is obtained, under the decree, it relates back to the time of filing the bill, the same as a levy and execution does to the date of the lien of the judgment.

We think this is the rule; and under it, all parties can obtain their rights, when fixed, without conflict, and in a manner least expensive, and according to sound principles of equity. When the several rights and liens are definitely determined by this honorable court, there need be no conflict between State and Federal courts.

It will be observed that the judgment, on which Lyon filed his bill, was obtained in the Circuit Court for the Northern District of Illinois; the same court in which Mills & Co.'s judgment was obtained, but not till afterwards (p. 7, record).

The first error assigned is, as to the admitting of the record in the LaSalle County Circuit Court. It may be said that a State court has no jurisdiction in such cases; and, if this be so, then the question arises, whether the plaintiff in error can take the objection, for the first time, in a proceeding in ejectment. May it not be said that the objection comes from Benedict, who claims a superior title, and that he has the right to take the objection, as he was not a party to the suit in LaSalle county; and that he is not to be effected by that proceeding, unless the court had jurisdiction of the subject matter of the suit. If the State court had no jurisdiction upon a judgment rendered in the Federal court, then the defendant in error had no title to the land, neither legal or equitable. We submit these suggestions for the consideration of the court.

II.

We will now consider the second point in the case; and in presenting authorities, and our views, for the consideration of the court, we will, first, show that the complainant did acquire such a lien and right by the bill; second, that Benedict did obtain the legal title to the property in question; and third, that the title of Benedict, thus acquired, was paramount to the title of the defendant in error.

1. As to the lien and right acquired by the bill and service of process, we will refer the court to the authorities, cited by us, in the case of *Chittenden* v. *Brewster*, No. 198, and will only add such other cases as we have upon the point, and such suggestions as we may consider necessary, to call the attention of the court to such questions as this case presents, not made in *Chittenden* v. *Brewster* —that being a general assignment of all the debtor's property, and held void as against creditors. The case of Mills and others against Miller and others, on which Benedict's title rests, was a creditor's bill, filed after the return of execution unsatisfied, to reach all the property and effects, whether personal or real, of Miller, the judgment debtor. The bill stated, generally, and charged that Miller had real estate, and also personal effects and choses in action, which ought to be applied in satisfaction of the judgment; and if he had made any transfer thereof, that the same was made to enable him to control the same, or the avails thereof, or to hinder and delay the complainants in the collection of their debt, etc. The real estate was not described by number of lots nor by meets and bonds (p. 42, record).

The bill did not seek to reach the real estate in aid of an execution at law, resting in the hands of the officer, nor in aid of a judgment, claim it to be a specific lien upon the lots in question; therefore, the doctrine of lien and right, in this case, will have to be ap-

plied, as fixed by the filing of the bill, to the real estate of Miller, which he did, in fact, own, but the title of which had been transferred to Williams prior to the docketing the judgment. We shall assume that the complainants, Mills & Co., did, by their bill, acquire a lien and right upon these lots of Miller; which lien and right, no other creditor could interfere with by bill in the State court, filed afterwards; and that the court, having jurisdiction of the parties, retains the power over the property until decree, and then, by acting upon the property, through Miller, and decreeing the conveyance, by Miller, to a receiver of the court, the title related back to the time of filing the bill and service of process. It is not necessary that the authorities should show that this lien and right is specific, like a judgment or execution after levy, to give to the complainants the right we claim; nor is it necessary to show that this title, which we say relates back to the filing of the bill, should be, in fact, a legal title. It is sufficient that the right or preference, as called by some judges, exists in favor of the complainants, so that they do get title after the decree. The security which this preference gives the complainants, in this case, did fully protect them, as no other party did obtain the legal title from Miller, prior to his conveying to Moulton, the receiver, upon which Benedict claims title.

We claim, however, that the rule of law, as to a lien and right, in cases of fraudulent transfer of property, whether it be personal or real, is the same upon judgment creditor's bills. That real estate fraudulently conveyed can be reached by the bill, the same as equitable assets, and the title obtained, through a decision, on a conveyance from the debtor.

The following cases are referred to in the case of *Chittenden* v. *Brewster*, all of which recognize the doctrine, that the filing of a bill and service of process, by a judgment creditor, on a return of execution unsatisfied, a lien does attach, or a right exist, in the complainant, to apply the property discovered in satisfaction of the judgment, and that lien and right will be protected.

McDermot v. *Strong*, 4 John's Ch. Rep., 687;
Beck v. *Burdett*, 1 Paige, 305;
Corning v. *White*, 2 " 567;
Utica Ins. Co. v. *Power*, 3 " 365;
Wakeman v. *Grover*, 4 " 23;
Ames v. *Blunt*, 5 " 13;
Burall v. *Leslie*, 6 " 445;
Boynton v. *Rawson*, Clark's Ch. Rep., 584;
Hadden v. *Spader*, 20 Johns, 554, opinion of Juctice PLATT, and Chief Justice SPENCER;
Storm v. *Waddell*, 3 Sand. Ch. Rep., 519;
Exparte General Assignee. In re., Allen 1, N. Y. Legal Observer, p. 115, opinion by Judge CONKLIN;
Porter v. *Williams et al.*, 5 Howard Pr. Rep., 441;
Edmeston v. *Lyde*, 1 Bage, 637;
Voorhies v. *Seymour*, 26 Barbour, 570;
Fetter v. *Cirode*, 4 B. Monroe, 482;
Chatauque Co. Bank v. *White*, 2 Selden, 251.

The following authorities are upon the law of notice, by filing the bill and service of process:

1 *Vernon's Reports*, 318;
Sugden on Venders, 495;
Marray v. *Ballou*, 1 John's Ch. Rep., 566;
Edgel v. *Haywood*, 3 Atk. 357;
Weed v. *Pierce*, 9 Cowen, 729:
Boynton v. *Rawson*, Clark's Ch. Rep., 589;
Roberts v. *Jackson*, 1 Wendell, 486;
Gilman v. *Hamilton*, 16 Ills. 225;
Lyle v. *Bradford*, 7 Monroe, 112;
Lytle's Ex. v. *Pope's Admr.*, 11 B. Monroe, 297;
Weed v. *Small*, 3 Sand. Ch. Rep., 275;

Herrington v. *Herrinyton*, 27 Mis., (6 Jones) 560;
Allen v. *P. & M. Bank*, 22 Ala., 793;
Goodwin v. *McGhee*, 15 Ala. 232;
Chandron v. *Magee*, 8 Ala., 570;
Jackson v. *Dickerson*, 15 Johns, 309.

After a fraudulent transfer of real estate, by a judgment debtor, so that the judgment, when docketed, is not a lien, and the property cannot be sold on execution, and title given, without the aid of a court of equity; then, when an execution is returned unsatisfied, the filing of a bill will entitle the party to a discovery of all the debtor's property, within the jurisdiction of the court, both personal and real, and to relief; and that relief can be extended according to the rules and practice of a court of equity.

Chancellor WALWORTH, in the case of *Eameson* v. *Lyde*, 1 Paige, 641, say: "The principle being established, that every species of "property, belonging to a debtor, may be reached and applied to "the satisfaction of his debts, the powers of this court are perfectly "adequate to carry that principle into full effect.

The Chancellor also says: "The debts, choses in action, and "other equitable rights of defendant, may be assigned or sold un- "der the decree of this court, so as to vest an equitable interest in "the purchaser, which will be protected, both here and at law."

We submit that, from this case the rule is as we contend. Every species of property most certaintly includes real estate. We believe, further, that in a case where a debtor had real estate which the sheriff could not find, for the reason the deed was not recorded, and return of execution unsatisfied, a bill might be filed, and the debtor compelled to discover his property; and in his answer, if he should disclose an unrecorded deed of land, which the sheriff could have taken to satisfy the judgment and execution, still the court could order the debtor to convey to a receiver, and the receiver to

sell the land, so discovered, to satisfy the judgment; and such sale would give the creditor the property as against all creditors proceeding by bill or otherwise, after the filing of the bill and process served.

The case of *Chautauque County Bank* v. *White*, 2d Seldon Rep., 236, we think fully sustains our view of the law, as to the power of a court of equity to reach real estate of a fraudulent debtor, and protect the diligent creditor in obtaining the property upon his lien and right, created by filing bill and bringing the parties into court, so that the property, fraudulently conveyed, would be in the custody of the law and the court. In that case there had been a general assignment, made by Saxton in September, 1837, to Crosby & Crane, for the benefit of creditors, containing both personal and real estate. Webb & Donglass obtained judgment and return of execution, and filed bill against Saxton and his assignees, to reach the property assigned, alleging the assignment fraudulent; and prayed a decree—that it be declared void, and for the appointment of a receiver of all the property, and a sale thereof.

A decree was made November 1st, 1838, directing the appointment of a receiver, declaring the assignment fraudulent and void; directing Saxton to assign and deliver over, on oath, to the receiver, all things in action, rents, real estate and effects, which were under his control when the injunction was served; and directing the assignees to assign, transfer and deliver over to the receiver all property, things in action, rents, and real estate, of Saxton, held by them by virtue of any deed or assignment in trust, that was then, or at the time of the service of injunction, in their possession, custody or control. The decree was afterwards opened as to the assignees, and they let in to defend. Saxton, in pursuance of the decree, executed January 5th, 1839, to Lester, the receiver, a conveyance of all the property, both personal and real; other judgments were obtained against Saxton, and other bills, filed by other creditors, for the same object. Crane, the only assignee who acted under the assignment, was, on the 19th of June, 1839, directed by an order

of the Chancellor, made in the suit of Webb & Douglass, to assign to the receiver, all the property which he claimed as assignee with Crosby. With that order Crane complied, September 9th, 1839; and February 29th, 1840, a final decree, declaring the assignment fraudulent and void was made, and Lester, the assignee, ordered to sell the property conveyed to him, and that he executed a conveyance to the purchaser. The receiver made sale, and White became the purchaser of the real estate, May 7th, 1840. Crosby, who held the legal title jointly with Crane, did not convey, as he was out of the country.

On the judgment of the bank, which was recovered by one Morris Adams, July 27th, 1838, and the judgment recovered January 7th, 1839, execution issued, and the same real estate sold as the property of Saxton on the 14th January, 1842.

The plaintiffs filed a bill August 17th, 1842, praying that their judgment might be declared a lien upon the premises purchased by them, from the time their judgment was docketed; and that their title, under the sheriff's sale, might be declared superior to the defendant's title, derived from the receiver.

This case was heard by PARKER, Vice-Chancellor, and the bill dismissed; and the plaintiff's appealed to the Supreme court at general term. The case was argued before HARRIS, WATSON, and PARKER, Judges; and the decree reversed by HARRIS and WATSON —PARKER dissented. The questions which controled the judgment in the Supreme court seemed to be:

1. That the receiver was a common law receiver.

2. That the court of chancery had no power, upon a creditor's bill, to order the real estate of a judgment debtor to be sold to satisfy the judgment.

3. That a transfer, by the debtor, to a receiver by order of the

court, did not vest the legal title to the real estate in the receiver, so as to authorize the court to direct him to sell such real estate, and apply proceeds, etc.

4. That such a transfer, by the judgment debtor, did not so effectually divest the judgment debtor of his title to the real estate, as to prevent a judgment subsequently rendered against him from becoming a lien thereon; and a purchaser at an execution sale, in such a judgment, would become vested with the title, notwithstanding the sale, by the receiver, in the creditor's suit, made in pursuance of an order of court.

5. That a deed, by the receiver, was a cloud upon the title of the purchaser upon execution sale, and that a court of equity should remove it, etc.

From the judgment in the Supreme Court, White appealed to the Court of Appeals, and the case was argued by W. Curtis Noyes for appellants, and by Chauncey Tucker for respondents. The decree of the Supreme Court was reversed, and that of the Vice Chancellor affirmed. Opinions in the Court of Appeals were delivered by Judges GARDNER and GRIDLEY. The principal points made by Judge HARRIS in the Supreme Court were considered by Judge GARDNER, and as that opinion seems to settle the question upon some of the points in this case, we can do no better than to copy here so much of it as we consider applies to the questions under consideration.

GARDNER, J., says: "The important question in the cause is "whether the conveyance by Saxton to the receiver, on the 5th of "January, 1839, divested the grantor of his interest in the real es- "tate in question, so that no lien was acquired by the plaintiffs "under their judgment subsequently docketed.

"Were it not for the elaborate opinion of the learned judge who "delivered the judgment of the Supreme Court, I should deem the

" interrogatory satisfactorily answered in the affirmative, by the " preceding statement of facts.

" The statute declares, 'that judgment of a court of record " shall bind the real estate of the debtor, which he *may have* at the " time of the docketing of the judgment.' In this case, the as- " signment of Saxton, the debtor, of all his real estate, was made " to the receiver on the 5th of January, 1839, and the question is, " what he had remaining subject to a lien of the plaintiffs' judg- " ment, obtained two days afterwards.

" If the assignment and trust deed to Crane and Crosby were " operative, the legal title was in them as assignees. If fraudulent " and consequently void, as the plaintiffs assume, and as the court " of chancery had decreed, when they directed the appointment of " a receiver, this the conveyance by Saxton to the latter, under the " order of the court, divested him of all his property (except that " exempted from execution), the premises in question inclusive.

" The power of the court to make the order of November, 1838, " is not questioned. The Supreme Court admit that the convey- " ance to the receiver is, in *form*, sufficient to transfer the title, " and that, in *terms*, it is in conformity with the order. It is said " that Lester was a common law receiver. But such a receiver may " be, and in this case was, specially authorized to receive what the " judgment debtor was directed to transfer and assign. The subject " of the transfer was 'all the property, rents and real estate' of Sax- " ton, as provided by the decree and enumerated in the assign- " ment. We are told 'that the effect of the words, assign and " transfer, depends upon the *intent;* and the intent was to " convey to the receiver just interest enough in the property " to enable him to protect it, and receive the rents and profits.'

" This is the view taken by the court below. We are not in- " formed what would be the nature of that partial interest, " which, when conveyed, would enable the receiver to acquire

" possession of, and protect, the real estate, and yet leave a resid-
" urem in the grantor upon which the judgment of the plaintiffs
" would be a lien. The adjudication of the court, and the inten-
" tion of the Chancellor, is to be ascertained from the record. And
" on examining the decree, we find no allusion to an undefined in-
" terest, which is not a legal one, but which will, notwithstanding,
" give possession of the lands, and a title to receive the profits, and
" guard both against all persons whatsoever; but it is there 'ad-
" judged and decreed that the defendant, Saxton, shall assign,
" transfer and set over, *all* the things in action, equitable interests,
" *rents* and *real estate* which were in his possession, custody or con-
" trol, at the time of the service of the injunction.' As against the
" complainants in that suit, the debtor had neither parted with the
" the possession, title or control, of any of his property by the
" fraudulent assignment. The decree places all of it, things in ac-
" tion and real estate upon the same footing, as to the quantity of
" interest to be conveyed; and a limitation as to one in this respect
" is applicable to both, or neither. The assignees are also required
" to convey to the same person, obviously manifesting the intention
" of the court, that the receiver should be clothed, not only with the
" *substantial*, but also with the *formal*, title to the entire property.

" If this is the true construction of the decree, it disposes of this
" controversy. The lien of the plaintiffs' judgment never attached
" upon the premises; the subsequent sale was inoperative, and
" conferred no title upon them as purchasers. To this result, it is
" immaterial whether the object of the assignment to the receiver
" was merely to protect the property and collect the rents, since the
" court has determined that the transfer of the *whole interest* was
" necessary to enable the officer to discharge those duties. That
" decision cannot be reviewed here, and is conclusive in this case.
" Nor is it material whether chancery could decree a satisfaction of
" the demands of judgment creditors out of the real estate. If the
" Chancellor, in this particular, exceeded his jurisdiction, the sale
" might be void; but the title of the receiver, under the assignment,
" would not be affected. The case made by the plaintiffs, assumes

" the validity of that transfer; and predicates their title to relief " upon the sole ground of a legal lien, and sale by virtue of their " judgment. The difference between the parties to this suit, is not " as to the jurisdiction of chancery, to make the order of November, " 1838, but as to its construction. The bill, in its frame and par- " ties, can be sustained upon no other ground.

" But in the second place, the court of chancery had authority, " under the circumstances of this case, to decree a sale of the real es- " tate. The provisions of 2 R. S., 174, sections 38, 39, apply to " creditor's bills, strictly so called, where the only claim to relief is, " that the remedy of the creditor is exhausted at law. In those " cases, an execution must be returned unsatisfied, and this alone " confers jurisdiction upon the court to compel a discovery, and " afford the relief mentioned in the 39th section. The common " law powers of the court in reference to fraudulent trusts and con- " veyances, are not touched by these provisions. Fraud and trust " were familiar heads of equity jurisdiction, independent of the " statute. The creditor, invoking the aid of the court, must estab- " lish his title to its interposition, by alleging a lien, or quasi lien, " upon the real or personal property which was the subject of the " trust, and he would then be entitled to relief, notwithstanding he " had a remedy at law, by levy and sale upon execution. *In all* " *cases of fraudulent trusts, the court may, in its discretion, direct* " *a sale by a Master, and compel the debtor and trustee to unite in* " *the conveyance to the purchaser; or it may order an assignment* " *to a receiver, as was done in this case,* to the end that the proper- " ty may be disposed of under the special instructions of the Chan- " cellor; or the fraudulent conveyance may be annulled, and the " creditor permitted to proceed to a sale upon his execution. (9 " Wend., 561; 3 John. Ch. R., 507; 2 Atk., 477; 3 Id., 357; 1 " Paige, 642; 3 Id., 235, 237.)

" The authoritios cited by the plaintiffs assert, or imply, these " principles. Indeed, their counsel was understood as conceding,

" substantially, the jurisdiction of the court by the common law;
" but claimed that it had been limited to sales of personal prop-
" erty in satisfaction of the judgment, in all cases by statute. In
" this, I think he is mistaken; and in *Lervy* v. *Rogers*, 3 Paige,
" 237, the Chancellor seems to have been of the same opinion."

The case of *Le Roy* v. *Rogers*, 3 Paige 236, was a creditor's bill filed on the return of an execution unsatisfied. The bill stated the judgment and return of execution, and charged that the defendant was entitled, or interested in, or possessed of, personal property, money, bank stock, insurance stock, choses in action, &c. The bill further charged that the defendant, since making the covenant on which the judgment was recovered, had made some assignment, or trasfer of his property, upon some secret trust, or other trust, for the benefit of himself, &c.; and it prayed a discovery of the property and effects of the defendant, &c.

The case was heard on demurrer to the bill, and the Chancellor says: " *The complainant was entitled to a discovery of all the real* " *estate of the defendant which he had within the city of New York* " *at the time of the docketing of the judgment, although such prop-* " *erty may have been fairly disposed of since that time.* In that " case, though the discovery might not enable this court to reach " the property, by its own process, it would enable the complain- " ant to reach it by an execution at law, which could be issued " under the sanction of this court, notwithstanding the filing of the " bill in this cause. (*The Protector* v. *Lord Lumley*, Conroy's " Rep. 98.) This is a bill for discovery, in aid of the execution at " law, as well as for relief against property which cannot be levied " on by execution. For that reason the complainant is entitled to " a discovery of all the property, both real and personal, which " the defendant now owns, either in the city of New York or else- " where. If it is within this State it may hereafter be reached by " an execution out of this court; and if elsewhere, the defendant " may be compelled, by an order of the court, to transfer it, by a

"proper conveyance, to a receiver, to be sold and applied to the "payment of the complainant's debt. Even if no relief could be "afforded by this court, the complainant, having exhausted his "remedy at law upon his judgment, would be entitled to a discov- "ery for the purpose of enabling him to reach the defendant's "property through the medium of the proper legal tribunal."

McCalmont et al. v. *Lawrence*, decided in the Circuit Court of the United States, for the Southern District of New York, in equity, April 5, 1847.

5 New York Legal Observer, 205.

This is a case where an application was made to compel a purchaser of land, sold by a receiver, under a decree, to accept the title and complete his purchase, or for a re-sale of the property and an order on the purchaser to pay the deficiency.

We copy the statement of the case and the opinion of the court:

"The complainants, as judgment creditors, had filed a bill to set "aside as fraudulent, a conveyance of lands made immediately "before the complainants obtained judgment against the grantor "in such conveyance. The bill was filed against the debtor "(grantor) and the assignees only.

"In November last, on a hearing on pleadings and proofs, the "court made a decree, declaring the assignment void as to the "complainants, ordering the property remaining unsold, in the "hands of the assignees, to be sold by a receiver who had been "appointed in the cause, and the conveyance to be executed on "such sale, by the receiver, and by the grantor and grantees, in "the deed of assignment, and the proceeds of the sale to be ap- "plied to the complainants' judgment.

"Under this decree a sale was made of lots to divers persons, "and among others, to Mr. A. B. Davenport, of one lot, who paid

" his deposit and signed a contract to complete the sale. The sale " had been announced as one which was to give a perfect title.

" Mr. Davenport's counsel, ascertaining that there were subse- " quent judgments, (in date after the assignment and complainant's " judgment) objected to the title, on the ground that the assign- " ment, being declared void, the title could not be conveyed by the " deed tendered, but could only be made by a sale under an exe- " cution on the judgment. A motion was now made to compel " the purchaser to take the title."

" April 16. After advisement, the court this day delivered their " opinion.

" Nelson, J., delivered the opinion of the court, stating that the " following points had been ruled in the case:

" I. Chancery has jurisdiction on a bill filed by a judgment " creditor, for relief against a conveyance of lands by his debtor, " made with intent to defeat the judgment lien, or to hinder or de- " lay satisfaction of the judgment, whether execution has been " issued thereon or not.

" II. The creditor who first institutes a suit in chancery, to " avoid a fraudulent conveyance is entitled to relief without re- " gard to other creditors, standing in the same right, but who have " not made themselves joint parties with him.

" III. The relief awarded in these cases is founded upon the " fraud attempted againsta lien already attached to land, or because " of the assignment, with fraudulent intent, to prevent the lien " from attaching, and equity consequently gives the full remedy " which could have been obtained through a lien, by execution, " but without referring the matter to the action of the law court or " its process.

"IV. For chancery, having acquired the jurisdiction of the "subject matter, because of the fraud, will apply the property "fraudulently conveyed, to the satisfaction of the prosecuting "creditor, pursuant to its own methods of proceeding.

"V. The action of chancery, upon the fraudulent grantor, or "assignee, is only to the extent of supplying a remedy to the suitor "creditor, as, to all other parties, the assignment remains as if no "proceedings had been taken.

"VI. It is competent for chancery to order the assignee of real "estate, fraudulently conveyed to him, to reconvey it to the as- "signor, in order that execution may act upon it; or to order him "to convey it to the proper officer of the court of chancery, or "otherwise, so as best to effect its appropriation in satisfaction of "the judgment debt.

"VII. To that end, the order heretofore granted by this court, "that the assignees and assignor, in this case, furthermore join with "the receiver in executing conveyances to the purchasers, under "the sale directed by the court, is appropriate and valid.

"VIII. The title made, pursuant to the decree of this court in "that behalf, is full and perfect for all the interest the assignees "and the judgment debtor had in the lands transferred by his as- "signment; for that which would have been bound by the judg- "ment, in the proceedings mentioned, had not such assignment "been made, and discharged of all right of redemption, by him "or other judgment creditors.

"IX. The purchasers, upon the facts before the court, are "bound to accept the title offered them."

The case of *Corning* v. *White*, 2 Paige, 567, was by a judgment creditor, filed after a return of execution unsatisfied. The defendant admitted that he possessed equitable assets, but alleged that he

had other judgment creditors, whose executions were unsatisfied, and insisted that they were entitled to share of his property.

The Chancellor says: "This court has frequently decided "that the creditor who first files his bill here to reach the defend- "ant's property, which cannot be sold on an execution at law, "obtains a preference; and that the defendant has no right to "object that there are other creditors, whose debts he had also "refused to pay out of such property.

"Equality among creditors is equity, whether their debts are in "judgment or otherwise; and every debtor has the right to act upon "that principle without impairing any of his rights. He cannot be discharged under the insolvent acs, if he gives a preference to "one creditor over another, knowing himself to be insolvent. But "if he is an honest man, and wishes to put all his creditors upon "an equality, he may assign his property to his creditors, to be "distributed among them; or he may convey it to some responsi- "ble trustee, to be applied to the payment of all his debts, with- "out giving preference to any. If he does this before any of the "creditors have obtained a preference at law, *or by filing a bill in "this court*, they will all be placed on a footing of equality.

"But the filing of the bill here, under the provisions of the "revised statutes, *operates as an attachment of property which can- "not be levied on at law.* It gives to the vigilant creditor a right "to a priority in payment; and the creditor who next files his bill "will have the second lien. An assignment under the insolvent "act, after the commencement of the suit, only gives to the "assignee a right to the surplus, after payment of the complain- "ant's debt. *The defendant, after the service of the injunction, can "only make an assignment subject to the prior equity of the com- "plainant.* The receiver is an officer of the court, who takes the "property and holds it subject to the equitable claims of all par- "ties; and after payment of the debt of the complainants, he will "be directed to bring the surplus into court, to be paid over to "whoever may be entitled to the same.

"There must be a decree in this case, declaring the right of the "complainants to all the property, choses in action, or other equit- "able effects of the defendant, which he had at the time of the "commencement of this suit, or which were held in trust for him, "except his necessary bedding and other articles which are exempt "from execution, or so much thereof as may be necessary to pay their "judgment in the pleadings it this cause mentioned, together with "the costs of this suit; and a receiver must be appointed to receive "the said property, choses in action, and effects, to convert them "into money, and to apply the same in satisfaction of the judg- "ment and costs.

"There must also be a reference to a Master, residing in the "county of Onondaga, to appoint a proper person as receiver, and "to take from him sufficient surety for the execution of his trust. "And the defendant must disclose, assign, and deliver over on oath "to such receiver. under the direction of such Master, all such "property, choses in action, and effects, and the proceeds of such "as have been received and collected by him since the commence- "ment of this suit. The receiver is to have the usual power to "compromise and collect the debts, and convert the property and "effects into money, and to apply the same in satisfaction of the "complainant's debt, and costs."

The case of *Grosvenor* v. *Allen*, 9 Paige, 74, is a case where the judgment debtor had purchased real estate, and held a contract to convey on the payment of the balance of the purchase price. The statute declared that the interest of a person holding a contract for the purchase of lands, shall not be bound by docketing a judgment, nor shall it be sold on execution. The Chancellor says: "Previous "to the revised statutes, the equitable interest of a judgment debtor "in lands, was in equity subject to the lien of the judgment, ex- "cept as to *bona fide* purchasers without notice. * * * * * The "statute having declared that such an interest in law shall not be "bound by the docketing of the judgment, this court cannot so "far repeal the statute as to make the judgment a lien upon the

" land in equity, and thus to defeat an assignment for the benefit " of creditors *made before the judgment creditor has obtained an* " *equitable lien upon the interest of his debtor in the premises, by* " *the commencement of his suit in this court to reach that interest, in* " *the manner directed by the statute.*"

We have thus far endeavored to show that Mills & Co. did, by their bill, acquire a lien and right to the property discovered by Miller in his answer, and that in the proceeding, decree and sale by the receiver, under the order of the court, Benedict did acquire the legal title to the lots in question. We will now show that the title thus acquired by Benedict to the lots, is the legal title obtained from Miller, and that his title is paramount to the title of the defendant in error.

The question is, did the conveyance, from Miller to the receiver, vest the legal title, so that the receiver could pass the title to Benedict, at his sale, made pursuant to the order and decree of court? We say it did. We have shown that the court had jurisdiction of the parties, and of the subject matter of the suit, and possessed the power and authority to grant the relief prayed for in the bill. We have shown that the property was discovered by the answer of Miller to the allegations in the bill.

We have shown that the court made a decree directing Miller to assign and transfer to the receiver all the property and effects, both personal and real, which he had at the time of filing the bill. We have shown that he did make a transfer, in due form of law, of the lots in question, to the receiver, as directed by the court, and that the receiver made sale of the lots, and Benedict became the purchaser, and received a deed in due form of law.

If the court please, apply the law to this case which Judge GARDNER laid down in the case in 2 Seldon, p. 251, and it will appear that, as against the complainants, Mills and others, the debtor, Miller, had neither parted with the possession, title or control of

the lots in question, by the fraudulent conveyance to Williams. If this be so, then there was no necessity of Williams reconveying to Miller, or conveying to the receiver, or to the purchaser. He had no title to convey; that which he received from Miller being void, it was the same as though never made. Judge GARDNER says that the assignees, Crosby & Crane, were required to convey to the same person, obviously manifesting the intention of the court that the receiver should be clothed, not only with the substantial, but also with the formal, title to the entire property.

It is evident that this remark of the learned Judge was only made as showing the intention of the court in making the decree; that is, the court did not intend, by the decree, to simply cause the real property to be conveyed, for the purpose of enabling the receiver to collect the rents, as stated by Judge HARRIS.

It cannot be said that Judge GARDNER intended, by this remark, to be understood that a conveyance, by Crosby & Crane, was necessary to convey title to the receiver, Lester, because the record showed that Crosby, who held the title to the lands jointly with Crane, never did convey, and yet he said the title was good in White, the purchaser at the receiver's sale. If the title was good in White, because of the conveyance by Saxton to the receiver, then the title was good in Benedict, as Miller conveyed to the receiver, by order of the court. Crane's conveyance to Saxton could not include the joint title of himself and Crosby. It is clear, therefore, to our mind, that Judge GARDNER did not place any importance to the conveyance by Crane, one of the assignees.

Williams was not directed to convey, because he had not been served with process, and had not appeared, and, therefore, was not in court, and could not be acted upon by the order and decree of the court. Was it necessary that Williams should have been a party, and served with process, to enable the court to decree a transfer, by Miller, of the lots in question, if the deed, in fact, from him to Williams, was void? We think not, for the reason that no

title could pass by the fraudulent and void deed. The position of the record might involve upon Benedict the necessity of showing, by proof, in case that deed should be set up against him, as a prior conveyance, by Miller, of the legal title, that the deed was void. Whenever that conveyance should be set up against Benedict it would be time enough for him to show it void. That conveyance was not given in evidence in the court below. Benedict has what Judge GARDNER calls the substantial title; we say it is the legal title from Miller, through the receiver. The formal title, which is the fraudulent title, is of no force, or value, and could not, in any way, give strength or force to the substantial title which Miller conveyed, under the decree, to the receiver, and by the receiver to Benedict.

Suppose, for argument, that Williams yet has the right to a day in court, to be heard as to his formal title as between him and Benedect., can the defendant in error set up, in an action of ejectment, Williams' right, or formal title, to defeat Benedict's substantial title to the property? We think not, for the reason, it is competent, as between these parties, to show the fraud in the conveyance. It will be remembered that the defendant in error did, by the decree of the La Salle County Circuit Court, show that the title of Williams was fraudulent and void, not only as to complainants, but as to all the creditors of Miller; such being the proof, we say that the defendant in error was estopped from asserting that a conveyance which he admitted to be fraudulent and void, as to all creditors of Miller, was good in law, as against Benedict.

We think the defendant in error was also estopped from setting up, or claiming that the Williams title was good as against Miller. It may be true that Miller could not impeach his own fraudulent deed to Williams, and thereby gain an advantage over the defendant; but that is not this case. Miller did not, for himself nor for Benedict, in any way, bring the Williams title in question. It was not necessary that he should do so. The common source of title was in Miller, by the agreement at the trial, and the defendant in error,

to show title in him, set up a fraudulent conveyance to Williams, and a decree declaring it void, and a sale by a Master, not upon execution, nor from a conveyance of the legal title from Miller, but simply an order of the court that the Master make the sale and give a deed.

To defeat this the plaintiff in error gave, in evidence, the prior proceedings on creditor's bill, and decree of the Federal Court, directing Miller to convey to a receiver, and the receiver to sell the lots and the deed to Benedict, thus showing a perfect chain of title from Miller, the common source, to Benedict, and that title the legal title, conveyed in due form of law. We have shown, by the authorities, that a court of equity has the power and authority to order a conveyance in such cases, and that when the title, by the order of court, has been conveyed by the fraudulent debtor, it is good, and does transfer the legal title. We therefore submit that, because Williams did not convey the fraudulent title, held by him, to the receiver, that fact cannot, in any way, prejudice Benedict's title between these parties, for the reason the defendant in error, by his own testimony, showed that the conveyance, by Miller to Williams, was fraudulent and void, thus making a case in law in favor of Benedict, as perfect as though it had been shown that Williams had been a party, and conveyed to the receiver, jointly or otherwise, with Miller.

In the case of the *Chautauque Co. Bank* v. *Risley*, 19 New York Rep. p. 369, it being on appeal in ejectment, it was held that "where a debtor has made a fraudulent conveyance of his real es-"tate, a subsequent judgment creditor may proceed to sell, under "his execution, and the purchaser may impeach the conveyance, "in a suit at law, to recover the premises."

The origin of this suit was an ejectment, growing out of the assignment of Saxton, the case mentioned in 2d Seldon. The plaintiff's title rested upon sheriff's sale, on execution, upon a judgment rendered against Saxton after he assigned to Crosby & Crane.

It was claimed that this title was paramount to the title derived through the receiver, on the creditor's bill, by Webb & Douglas, on declaring the assignment void. The defendant was in possession, as tenant of White, who purchased of the receiver; judgment was made for the plaintiff, and on case made in Supreme Court, a new trial was granted, (4 Denio Rep. 480). The case was tried before Justice BOWEN; the plaintiff had a verdict subject to the opinion of the court, at general term, in which court judgment was rendered for defendant, and plaintiff appealed; and on appeal to the Court of Appeals, the judgment of the Supreme Court was reversed and judgment rendered for the plaintiff. COMSTOCK, J., delivered the opinion in the case, JOHNSON, Ch. J., DENIO, STRONG and GROVER concurring therein.

We cite case in 19 New York Rep., for authority upon one point, and that is, to show that the rule of law is as we have stated upon the question as to the effect of the proof made by the defendant in error, that the conveyance from Miller to Williams was void, and that after the defendant in error had proved that fact, by the record and decree in the La Salle County Circuit Court proceedings, he was forever estopped from asserting that, as the title had not been obtained from Williams, as well as Miller, to Moulton, the receiver, in the proceedings had in the United States Circuit Court, Benedict's title was not the legal title.

On page 377 Justice COMSTOCK says:

"It has been argued, however, that on the trial the plaintiff's "did not support their title by proving that the debtor's convey- "ance to assignees, prior to all the judgments, was fraudulent. "That proof was made by the defendant.

"The plaintiffs, having shown the judgment and their title under "the sheriff's sale, were *prima facie* entitled to recover. The de- "fendant proved his title, under the proceedings and decree in "chancery, at the suit of Webb & Douglass, and under the as- "signment to the receiver and the sale by him. The decree ad-

"judged and determined that the prior assignment was fraudulent "and void; and the receiver's conveyance to White recited the "suit in chancery and the decree. The defendant's title depended, "therefore, on the fact that the assignment had been made in fraud "of creditors, and having thus proved the fact in his own favor, he "could not allege that it was not true in respect to the plaintiffs. "The recitals in the deed, under which he held, estopped him from "making that allegation. This, I think, is a plain proposition; "and the law was considered to be so by the former Supreme "Court, when the case was before it some twelve years ago."

4 Denio, 480.

Thus, we see, this authority sustains us directly upon the point, and from it we must conclude, that when the defendant in error proved the conveyance from Miller to Williams to be fraudulent and void, it made the title of Benedict perfect and paramount to that of his.

III.

We come now to consider the right of the plaintiff in error under the Homestead Act, which was approved February 11, 1851, and amended February 17, 1857.

Scates' Statutes, page 576.

The law, as amended, is as follows:

"Sec. 1. That in addition to the property now exempt by law "from sale under execution, there shall be exempt from levy and "forced sale, under any process or order from any court of law or "equity in this State, for debts contracted from and after the fourth "day of July, A. D. 1851, the lot of ground and the build'gs thereon, "occupied as a residence and owned by the debtor, being a house-"holder, and having a family, to the value of one thousand dollars.

"Such exemption shall continue after the death of such house-

" holder, for the benefit of the widow and family, some, or one of " them, continuing to occupy such homestead until the youngest " child shall become twenty-one years of age, and until the death " of such widow; and no release or waver of such exemption shall " be valid unless the same shall be in writing, subscribed by such " householder, '*and his wife if he have one*,' and acknowledged in " the same manner as conveyances of real estate are by law re- " quired to be acknowledged, 'it being the object of this act to " ' require, in all cases, the signature and acknowledgment of the " ' wife as conditions to the alienation of the homestead.'

"SEC. 2. But no property shall, by virtue of this act, be exempt " from sale for non-payment of taxes or assessments, or for a debt " or liability incurred for the purchase or improvement therefor."

Vanzandt v. *Vanzandt*, 23 Ill., 536;
Green v. *Marks*, 25 Ill., 221;
Phelps v. *Conover*, 25 Ill., 309;
Deere v. *Chapman*, 25 Ill., 610;
Smith v. *Marce*, 26 Ill., 150;
Miller v. *Marckle*, 27 Ill., 402;
Young v. *Graff*, 28 Ill., 20;
Moore v. *Dunning*, 29 Ill., 130;
Patterson v. *Kreig*, 29 Ill., 514;
Stephenson v. *Marony*, 29 Ill., 532;
Smith v. *Miller*, opinion, 21 April, 1863, not yet published.

All these cases are upon questions arising under the Homestead Act; from which it will be found, that Miller made upon the trial, proof conclusive to entitle him to a verdict.

We will point out the several points decided, which, we claim, fully sustain this point in the case.

The statute prohibits a forced sale of the homestead upon any

process or order from any court of law or equity. The debtor was a householder, and had a family, and resided upon the property. The debt was not incurred for the purchase money of the property, or for improvements thereof. The act states that no release or waiver of such exemption (meaning the homestead), shall be valid, unless the same shall be in writing, subscribed by such householder and his wife, if he have one, and acknowledged in the same manner as conveyances of real estate are by law required to be acknowledged.

Without this requirement of law being complied with, the conveyance is invalid, and we might say cannot become a valid conveyance of the property after the homestead right ceases to exist.

It would seem that the legislature put the same construction upon the law, in declaring the intention to be to require, in all cases, the signature of the wife as a condition to the alienation of the homestead. If the homestead exemption given by law has direct reference to the land and buildings thereon, then the householder can control the fee of the property, and no lien can attach, unless made as provided by law; nor can any sale by the debtor, or by order of court, be made, except as provided by law. A forced sale would be as invalid as a sale by the debtor.

The law gives the right and bestows the benefit, and no act of the parties, either voluntary or otherwise, can have the effect to defeat the right, except in the manner prescribed by law.

In cases where the householder and his wife are made parties to suits, as in the case of Lyon, and they make default, a decree cannot divest them of the rights conferred by the law.

If we are correct in this interpretation of the law, and the rights of the parties under it, then it follows as a matter of law, that the conveyance by Miller to Williams was invalid and conveyed nothing; and also, the decree and sale, in the case of Lyon and others.

The conveyance by Miller to the receiver is not invalid, as the homestead right was reserved in the deed. (See page 56 of record.)

Patterson v. *Kreig*, 29 Ill., 514.

This is a case where Kreig and wife gave Patterson a mortgage, on which Patterson brought ejectment. The mortgage was signed by the wife, but without any release or waiver of the homestead right.

CATON, Ch. J., on page 519, says: "This amendment (meaning "the act of Feb. 17, 1857) does something more than merely make "it necessary for the wife to join in the release of the homestead "right. It goes further, and cuts up by the roots all alienation of "the homestead in which she does not sign and acknowledge a re-"lease of the homestead right. This is made a condition to the "validity of all alienations of the homestead, whether by deed of "bargain and sale, or mortgage. There was no such release of "the homestead right signed and acknowledged by the wife, accom-'panying this mortgage, and without that, this statute in substance, "declares it to be invalid; and this reduces the case to the simple "question, can the plaintiff recover upon an invalid conveyance?

"This question is so easy that it answers itself.

"By annexing this condition determined that it should not be "binding in law without it, and *consequently it creates no rights as* "*a conveyance;* and it is only as a conveyance that the plaintiff "treats it, when he attempts to recover upon it in ejectment."

In the case of *Smith* v. *Miller*, not yet reported, the court held, that a mortgagee could not recover possession as against the homestead right.

WALKER, J.: "This was an ejactment for the recovery of the "premises in controversy under a mortgage. It was executed on "the 21st day of July, 1859, by defendant in error, and matured "two years after date. Mrs. Miller joined in the mortgage and "acknowledgment, but only relinquished her right of dower by the "acknowledgment.

"It appears by the agreed case, that the mortgaged premises at "the time the mortgage was executed, was the homestead of the "defendant in error, and that they resided on the same from that "time until and after this suit was instituted; that Youngs W. "Miller was the head of the family, residing with the same. That "the mortgage was not given to secure the purchase money or any "part thereof, for the premises, or for improvements made thereon. "The homestead exemption was claimed and relied upon as a de-"fence to the action, which was allowed by the court, and a judg-"ment rendered in favor of the defendants.

"In the case of *Boyd* v. *Cuddeback*, decided at the present term, "the decision in the case of *Vanzandt* v. *Vanzandt*, 23 Ill., 536, "was adopted, where it was held that it must appear from the cer-"tificate of acknowledgment, that the wife had specifically released "her right to claim the benefit of the Homestead Act. That with-"out it so appeared, the deed or mortgage was inoperative as a "release of that right. That as the act has made the signature and "acknowledgment of the wife a condition to the alienation of the "homestead, in all cases, that her release of dower in the premises "does not suffice. The acknowledgment in that case was the same "as in this, and it was held not to be in compliance with the statute.

"But it was urged that it could not be interposed in an action "of ejectment. This question was presented and determined in "the case of *Patterson* v. *Kreig*, 29 Ill., 514. It was there held, "that under the amendatory act of 1857, the wife being required "to subscribe and acknowledge the instrument in connection with "her husband, as conditions to the alienation of the homestead, if "the deed did not comply with the statute, it might be insisted on "to bar a recovery of the premises. That the amendment enlarges "the operation of the statute to such an extent as to apply to deeds "and other conveyances. That case is decisive of this. In this "case, it appears that the premises were of greater value than one "thousand dollars. To the extent of that excess the mortgage is "binding, and on a foreclosure that excess could be reached by a "division; or, if the premises were indivisible, by a sale in the

" mode presribed by the statute. Or, if a judgment were recov
" ered on the indebtedness, a sale could perhaps be had under the
" statute in the mode it has provided. But inasmuch as the mort-
" gage, as executed, was insufficient to release the premises from
" the right to the benefit of the homestead act, it was properly
" allowed as a bar to a recovery, and the judgment must be
" affirmed."

Young and wife v. *Graff*, 20 Ill. Rep., 20.

This is a case where the wife of Young gave a trust deed upon her own property to pay his debts. The deed was not executed as required by the act. Graff filed a bill in equity to foreclose, and it was held that the sale must be made subject to the homestead right.

BREESE, J., on page 29 says: "Then come in the homestead ex-
" emption, which Ellen Young has never released or waived, and
" which consequently *would prevent a delivery of possession if a*
" *sale was made whilst she lives*, should she become a widow, or
" until her youngest child shall become of age."

In the case of *Deere* v. *Chapman*, 25 Ill., 610, it was held, that the word "owner," in the act, did not confine the right to owner in fee simple, but included also a less estate the debtor might have, which could be sold on execution. Judge BREESE, on page 512 says: "The object of the law, most clearly, is to secure the head
" of the family in the possession and enjoyment of the lot and
" building for the maintenance and shelter of himself and family,
" as a home, without any special regard to the extent of the estate,
" or title by which he owned it."

Miller v. *Marckle*, 27 Ill., 402.

This case decides, that a release by a widow of her homestead right, will not affect the interest of the children.

We submit, that from the authorities, we have shown that the homestead right cannot be alienated without the conveyance be

signed by the wife and acknowledged as provided by law. That it cannot be sold on execution without a release or waiver by the householder and his wife, except upon the payment of one thousand dollars as fixed by law. That it cannot be sold by decree of court, unless the conveyance contain the signature of the wife and her acknowledgement. That the law extends to the wife after the death of her husband; and that she cannot defeat, by her conveyance, the right of the children after her death.

We must conclude, from all the authorities, that it is only the homestead right which would be invalid without the signature and acknowledgment of the wife; that the conveyance, for the purpose of holding the property, after the homestead right ceases to exist, is good without the release of the wife, but it remains dormant until the homestead-right is either released, the money paid, or it ceases to exist.

We submit, that in either case, so far as the right of Miller to occupy the homestead is in question, the rule of law is the same. He cannot, by any proceeding at law or in equity, be deprived of his homestead right, and dispossessed, except as provided by law. The decree in the case of Lyon and others could have no greater force and effect than a decree of foreclosure of a mortgage not acknowledged by wife.

In the case of *Young* v. *Graff*, 28 Ills., 29, it was held, that if a sale made on mortgage foreclosure, possession could not be obtained as against the homestead right.

In the case of *Patterson* v. *Kreig*, 29 Ills., 532, and *Smith* v. *Miller*, the wife being one of the grantors, and signed the mortgage, and acknowledged it in the usual way, but not specifically as to the homestead, and in those cases the mortgage could not maintain ejectment to recover possession of the premises.

In conclusion, we submit, if the court please, that if we are correct in the first point made, that the defendant in error failed to

show title in himself to enable him to recover, then the court erred in instructing the jury that the decree and proceedings in the La Salle County Circuit Court were, as to the plaintiff in error, conclusive as to the conveyance made by him to Williams, and that whatever title he had at that time was divested by the proceedings in the La Salle Circuit Court, and the deed made by the Master, and the confirmation thereof.

If we are sustained by the authorities cited and referred to upon the second point made, then the court erred in refusing the several instructions asked by the plaintiff in error.

In that case the court also erred in its instructions to the jury.

If we are correct as to the law giving a homestead right, then the court erred in refusing the instruction asked, No. 4, and in the instructions given to the jury.

From the light of all the authorities, and the principles involved in this case, it is clear that the learned Judge, who tried the cause in the court below, in his great caution not to create a conflict of jurisdiction with the State Court, fell into an error upon the several points in the case, either one of which ought to have enabled the plaintiff in error to prevail at the trial.

Respectfully submitted,

E. S. SMITH,
Att'y for Pl'ffs in Error.

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IN THE

Supreme Court of the United States,

DECEMBER TERM, 1864.

CHARLES G. MILLER, Plaintiff in Error,

against

JAMISON C. SHERRY, Defendant in Error.

Brief for Defendant in Error.

April 17th, 1857, these lots were conveyed by defendant, Miller, to Robert S. Williams, of Pittsburg, Pennsylvania.

At the October Term, 1857, of the Circuit Court of the United States for the Northern District of Illinois, Edward S. Mills and Newell Bliss recovered judgment at law against defendant, Miller, for $670.21.

This is the elder judgment, and if a lien could attach on the property in question, the first lien.

At the April Term, 1858, these judgment creditors filed a bill in chancery, in the said Circuit Court, to set aside certain conveyances alleged to be frudulent, and that the property so conveyed be sold to satisfy their judgment. The lots in controversy were not included in the bill, nor was the party to whom they were conveyed, and who held the legal title, made defendant.

At the October Term, 1858, of the said Circuit Court

of the United States, William H. Lyon and Werner W. Lyon, recovered judgment against said defendant, Miller, for $1,625.38, and sued out a *fi. fa.* on which the marshal returned *nulla bona.*

On the 15th of February, 1858, William H. and Werner W. Lyon, filed their bill in chancery to set aside a fraudulent conveyance of the lots in controversy, and as Williams, the fraudulent grantee, resided out of the State and district in which the judgment was recovered, he could not be made a party in the Circuit Court, therefore it became necessary to file the bill in the State court, which was accordingly done, making Charles G. Miller, Robert S. Williams, William C. Richardson, Eliza Miller, and Mary Ann Williams, defendants, charging fraud in the conveyance of the lots in controversy. This case was brought to decree July 11th, 1860. [Record, p. 34.] The conveyance was found to be fraudulent, and the master in chancery of said court directed to sell said lots, and execute deeds to the purchasers, "which shall bar and divest all and all manner of interest or right, or right of redemption, which the said Charles G. Miller, or any of said defendants, may have in and to the said property or any part thereof."

The marshal sold pursuant to decree, September 15th, 1860, [Record, p. 37,] and conveyed to purchaser.

After the above named decree had been rendered, and sale and conveyance made, to wit, on the 27th December, 1860, Edward S. Mills and Newell Bliss amended their bill charging the fraudulent conveyance *of the lots in controversy*, and making the said Robert S. Williams a party, and on the 13th of July, 1861, the bill was *dismissed as to said Williams*, and decree rendered against Miller and Richardson.

On the same day the lots in controversy were conveyed under said last named decree by Miller, to a master appointed by the court, who on the 23d of August, 1861, conveyed to James M. Benedict.

POINTS.

I

The lien of the elder judgment, if still subsisting, does not affect the transfer of title by the master's sale in Lyon's case. The sale is at the risk of the purchaser and he takes his title subject to the lien, but as against all else the title is good, and the lien must be set up by sale on execution, or by bill in equity, or by petition, to have the proceeds of the sale applied to the elder judgment. The production in evidence of a prior lien, does not defeat a sale on execution. The prior lien therefo[illegible] im[illegible] portance in the case. Indeed the sale to [illegible] under an execution, ~~not~~ resting on the li[illegible] ment, but under a conveyance made by Mill[illegible], transferring only such title as the decree *found* or *vested* in Miller. The lien of the judgment does not seem to be relied on, either in the case made, or in the brief of counsel.

The bill in equity of Mills and Bliss is not a general creditor's bill. Its sole end and aim is the satisfaction of their own judgment. They ask to set aside transfers which they alledge to be fraudulent as to *them* and *their judgment*, not as to any other judgment creditors. They designate such special property as they choose to go against to satisfy their judgment and they bring in such fraudulent assignees as they choose to charge.—(Rec., p. 43, 45.)

II.

The original bill filed by Mills and Bliss could have no effect on persons and property not named in it. For example: the lots in controversy might have been conveyed by Williams to an innocent third person for a full and fair consideration without *actual notice*, and the *lis pendens*, such as it was, would have been no notice. The averment in the bill that Charles G. Miller was, at the time of the rendition of the judgment aforesaid, and is now the

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owner of or in some way or manner beneficially interested in *some real estate* in this or some other State or territory, amounts to nothing—it is notice to *nobody* and of no *thing*. Neither Williams nor the lots were parties to the bill in chancery in the Circuit Court. The judgment which the bill was filed to satisfy had, as I think, no lien, for although the sale and conveyance to Williams were fraudulent and subject to be set aside in equity by the judgment creditor, it was good against all the world besides, and, *non constat*, that the judgment creditor would ever proceed to set it aside, but, if it were a lien, that does not affect this case—we proceed, subject to the lien, if it still exist, which depends on many contingencies.

Neither Williams nor this property was in the Circuit Court of the United States as a party or designated object at the time of filing Lyon's bill. Mills and Bliss had proceeded against certain property in the hands of designated grantees for a fund to satisfy their judgment. They do not open the door for any other creditors to come in and partake with them, but proceed by themselves and for their own benefit. If the defendants had paid and satisfied their judgment the suit had been gone, or they, having seized upon and appropriated property sufficient to satisfy it, equity would have suffered them to proceed no further. They might not hold an undescribed and in definite amount of property for years out of reach of other creditors merely to secure their debt of $670.21.

III.

In this state of the case Lyons filed their bill to set aside the conveyance to Williams and satisfy *their* judgment out of the property so conveyed.

And as the Circuit Court of the United States had not jurisdiction of all the necessary parties they filed their bill in the State court. They obtained a decree, got an order of sale, the property was sold by a master of the court, and deed made to purchaser before the matter was

ever noticed in the case of Mills and Bliss vs. Miller in the Circuit Court. The sale was made on the 15th of September, 1860. *They*, Mills, &c., amended their bill December 27, 1860. They went on, took a decree, and sold the property, without making Sherry, the purchaser under the recent sale, a party. They made Williams a party but dismissed their bill as to him before decree and took their decree against Miller and the property, which had been sold under the decree of the State court and conveyed to Sherry.

We claim that when Lyon's bill was filed in the State court designating the property specially, making Williams, the fraudulent grantee, a party and praying for the application of this particular property to the satisfaction of his debt, the subject-matter was properly in litigation in the State court, and a new bill, or an amended bill (which is the same thing in effect) in the United States Circuit Court could not divest the jurisdiction or interfere with the *re* in controversy.

IV.

At the time the sale under the decree in the Circuit Court was made the State court held jurisdiction of the case—both property and parties. It had adjudicated upon both property and parties. Williams, who held the legal title to the property in controversy, was never in the Circuit Court of the United States as a party, and the property had never been in litigation there until it had been judicially sold and transferred in the State court.

No lien could attach upon the property in question by virtue of the judgment in the Circuit Court, because the legal title was not in the judgment debtor. And the judgment creditor does not sell under execution but by virtue of a decree in chancery and a conveyance under that decree *by the defendant, Miller*, of such title as Miller had at the date of the deed to *Moulton*, the receiver, July 6, 1861.

What title had Miller on that day?

He had conveyed the legal title to Williams in 1857.

The property was sold by virtue of a decree in chancery in the State court and conveyed by the master according to the usage of the court, on the 17th September, 1860; there was therefore no title in Miller at the time he conveyed to Moulton. There was no sale or conveyance under execution or other proceeding *on the judgment*, therefore no title passed and no lien.

The decree rendered in Lyon's case declares the deed from Miller to Williams fraudulent and void as against creditors, and as the plaintiffs in ejectment claims title under that decree, it is said he is estopped from denying the fact so found, he must admit the deed to have been void. Be it so. Then, on the other hand, the party who relies upon the decree as an estoppel, that is, who *rests his case upon that decree*, is estopped to deny its validity, and it comes to this, that both parties claim under the same decree. A party cannot estop his adversary by a decree and yet deny the validity of the decree. It is a case of estoppel against estoppel. If the decree be valid, the property in controversy has been validly sold under it, and nothing was left in Miller to convey to the receiver, Moulton, under the amended bill, and decree upon it in behalf of Mills and Bliss.

This view we think disposes of the case, the claim of exemption as homestead excepted. See Instructions, Record, 59, 60.

There was proof upon the trial that the lots, for which the ejectment was prosecuted, were occupied as a homestead by defendant, and that they were worth $2,500 or $3,125. On this simple proof, without any petition, motion, or other representation of record, the defendant asked the court to instruct the jury:

"That the defendant was entitled to a homestead right under the laws of the State of Illinois, in such cases made and provided, *which he could set up as a defence in this case.*"

Which instructions the court refused. "*A defence in this case*," that is a *full defence*—not a defence to a part of the case, but to the whole case. The jury, under such charge unexplained, must have found a verdict for defendant.

But such charge would have ~~be~~ been erroneous. The defendant had a right to exemption to the value of $1,000. The plaintiff had a right to recover to the value of $1,500. The court below did not err in refusing this charge which, if made, would have been error, and counsel for defendant did not ask the court to charge the jury according to the law in the case, and the court was not compelled by any rule of jurisprudence to volunteer such charge.

The objection is that the court refused the charge asked.

Now it seems to us quite clear, that a proof of a homestead in a large property, many times the value of the homestead reservation, cannot on the showing in ejectment bar the recovery of the whole property. Some judicial mode must be resorted to of determining the extent of the reservation, and he who sets up the special and indefinite defence ought to define it. Perhaps if the homestead be worth no more than is reserved, the presentation by evidence of the fact were enough, but if worth more, it should be set up by some appropriate form of motion or petition, so that the issue could be tried and the value of the homestead set out, so that the jury could find defendant *not guilty* of the homestead, and guilty of the excess. But with this the court could do nothing of there own mere motion. The defendant, who relied upon the defence, should by some kind of petition or plea, or special motion for instructions, have placed the case in such position that the court could give his charge without making pleading or representations for him, or otherwise shaping his case.

We think the court did not err in refusing the charge

asked, and there is no actual charge complained of or set out as error, which touches this branch of the case.

The statute exempts the homestead to the value of $1,000 only. If it exceed that value, and be susceptible of division, the house, with ground enough to reach that value, shall be set apart, and the residue be sold for the satisfaction of the judgment or decree.

If not susceptible of division the whole shall be sold—$1,000 of the proceeds be paid to the defendant, and the excess applied on the judgment or decree.

In this case the property is shown to have been worth from $2,500 to $3,500.

If the homestead exemption had been set up in the chancery proceeding, as it should have been, if intended to be relied upon at all, it would not have been a full defence to the action, but a defence *pro tanto* only. It would not have prevented a decree, but have produced a modification of it only — either that the property be divided, and the excess sold, or all sold, and the excess over $1,000 applied on the judgment.

But here it is insisted upon, as a full and complete defence to the entire action.

It would be a fraud upon judicial proceedings for a party to withhold what would be only a partial defence, if presented at the proper time, in a direct proceeding, and set it up collaterally to defeat the entire action.

But, if it be conceded that the defence was made in apt time in the ejectment suit, it was not proven—was not sustained by the evidence, and should not have been allowed.

By the terms of the law, if the debt was for the purchase money of the property, or incurred in making improvements upon it, then the homestead exemption does not attach. And it is for the party claiming the benefit of the statute to bring himself within its terms, and to establish by proof all the conditions of the exemption.

Such is the exposition given of the statute by the Supreme Court of Illinois.

Kitchell vs. Burgwin, 21 Ills. Rep., 42, was a bill to foreclose mortgage.

The defendant, in his answer, claimed the benefit of the homestead exemption. In deciding the case the court said:

"The answer fails to make out the case in this, there is no averment in it that the land was owned by the defendant, *or that the debt was not incurred for its purchase or improvement.* All the facts stated in the answer may be true, and yet the claim to exemption is not established for the want of these averments, *which are indispensable.*

"A party claiming a statutory benefit must, by proper averments, either in his bill or answer, show himself entitled to the equities provided by it—all that is necessary to show his title and right to the relief he seeks."

In this case there is no proof upon the subject. For aught that appears the money for which the debt was incurred may all have been expended in improvements upon the property.

But again, the exemption if allowed at all, must be upon the claim of the plaintiff in error, defendant below. So long as he lives with his family, as its head, no other one is entitled to interpose the claim, and no other one seeks to interpose it. It is Miller alone who asks the protection of the statute; and he is estopped from doing so by the circumstances of this case. He had conveyed the premises to Williams, and by his answer, under oath, recognizes it as an absolute transfer of the property from him to Williams. Upon that answer the court decreed. Upon the faith of that decree the property was sold and purchased; and he will not now be permitted, by stultifying himself, to deprive the plaintiff in ejectment of the benefit of his purchase.

The case of Getzler vs. Saroni et al., 18 Ills. Rep., 511, is so analogous in its circumstances to the case under

consideration that I beg leave to make to the court a brief statement of its facts, and to quote a few passages from the decision of the court upon them.

In 1853, Saroni and others, creditors of Getzler, sued him in attachment, and levied upon his homestead.

In November of the same year, they recovered judgments, and had award of special executions against the property.

In April, 1852, before the commencement of the attachment suits, Getzler had conveyed the property levied upon to Fitz, in trust for his, Getzler's, wife.

In July, 1854, Saroni filed his bill against Getzler and his wife and Fitz, to set aside the deeds as fraudulent, and to subject the property to sale for payment of the judgments.

Upon hearing, a decree was entered, declaring the conveyance fraudulent, and ordering the property to be sold by the master, and the proceeds to be distributed among the judgment creditors. The property was sold, and bought in by Burgess for the attaching creditors, and conveyed to him. Burgess then applied to the court for a writ of assistance to put him in possession of the property.

Getzler had absconded, leaving his wife, Catharine, and family, residing upon the property, and she filed a bill to enjoin Burgess from taking possession, and to open and review the former decree, and setting up claim of exemption for the property under the homestead law. The Court said, upon the hearing of the case:

"The judgments in attachments were a proper foundation for equity interposition.

"The party as to whom such conveyance is void, may obtain his judgment at law and go into equity to remove the conveyance out of the way of his execution, or to subject the property to sale, in satisfaction of the judgment, by decree in equity.

"The wife, while the husband is living, cannot obtain

the benefit of the statute exempting homesteads from forced sale against the husband. It is for him, while living, to claim, if he choses, the benefit of the statute, and if he does not, the wife cannot enforce the exemption.

"Besides, *the property being conveyed to hinder and defraud creditors, was good against the husband, the grantee.* He, therefore, could not claim the exemption of the statute in regard to that property."

Now, Miller being the proper party to claim the benefit of the exemption, and to interpose it as a defence, and having failed to do so at the appropriate time, when he had the opportunity of doing so, the court could not, *ex-officio*, take notice of and enforce it. Not having set it up, or insisted upon it when he had the opportunity, the court decred, as it was bound to do, without noticing it; and by its decree, expressly foreclosed all right, title, and interest, of all the defendants, in and to said lots, and ordered them sold, absolutely freed from such claim. This decree was an adjudication of all the rights of all the defendants in and to the premises in controversy, and, whilst it stands, is conclusive upon them. The question before the court, and decided by the court in the chancery suit, was whether these lots were subject to the payment of the debt of complainants, or whether any of the defendants had any such right to, or interest in them, as exempted them from sale for such purpose?

It is a well settled rule of all courts that a fact which has been directly tried and decided by a court of competent jurisdiction cannot be contested again between the same parties in the same or any other court. Hence, a verdict and judgment of a court of record, or a decree in chancery, puts an end to all further controversy concerning the parties to such suit.

Hopkins vs. Lee, 6 Wheat., 109.
Bank of U. S. vs. Beverly et als., 1 How., 148.

There ought to be some point at which litigation will

cease, and when a party has had an opportunity of being heard, and of presenting a defence which might have protected him, but has failed to do so, he must suffer the consequences of his laches. After withholding his defence and permitting judgment or decree to be pronounced he cannot be allowed to urge it, and most especially in a collateral proceeding, to invalidate such judgment or decree.

By such a practice, judicial proceedings, instead of being solemn, authoritative, and salutary, would become very farcical and mischievous.

Some sanctity should be given to judicial proceedings; some time limited, beyond which they should not be questioned; some protection afforded to those who purchase at sales by judicial process; and some definite rules established by which property thus acquired may become transmissible with security to the possessors.

So long, says this court, in the case of Voorhees, vs. The Bank of the U. S., 10 Pet., 472, et seq: so long as a judgment remains in force it is, in itself, evidence of the right of the plaintiff to the thing adjudged, and gives him a right to process to execute the judgment; the errors of the court, however apparent, can be examined only by an appellate power.

It would be a well merited reproach to our jurisprudence, if an innocent purchaser, no party to the suit, who had paid his money on the faith of an order of court, should not have the same protection under an erroneous proceeding as the party who derived the benefit accruing from it.

The principles which must govern all sales by judicial process are general ones adopted for the security of titles, the repose of possession, and the enjoyment of property by innocent purchasers, who are the favorites of the law in every court and by every code.

The purchaser is not bound to look beyond the decree when executed by a conveyance, if the facts necessary to

give jurisdiction appear on the face of the proceedings, nor to look further back than the order of the court.

To the same effect are the cases of Elliott vs. Piersoll, 1 Pet., 340, and Thompson vs. Talmie, 2 Pet., 162, 168.

It is a general principle, essential to the repose of society, that when a matter has once been adjudicated and finally determined, by a competent tribunal, it shall be considered as forever at rest. And the principle embraces not only what actually was determined but also extends to every other matter which the parties might have litigated in the case. The authorities to this effect are very numerous, but I will trouble the court with only a few of them.

In Le Quen vs. Governeur & Kemble, 1 Johns. Cases, 488, the court stated the question to be—

Whether, in as much as previous to the trial at law, between the appellant and the respondents, they had full notice of the pretended fraud by the bill exhibited by Gomez and Rivera, they were not bound, if they meant to avail themselves of that defence, to do it upon that trial, and consequently whether they were not precluded from urging it to impeach the judgments against them?

The court then proceeded to say: "The general principle that the judgment or decree of a court, possessing competent jurisdiction, shall be final as to the subject-matter thereby determined is conceded and can admit of no doubt. The principle, however, extends farther. It is not only final as to the matter actually determined, but as to every other matter which the parties might litigate in the cause and which they might have had decided."

To the same effect are the cases of Marriot vs. Hampton, 7 Duruf. & East., 265; Kist vs. Atkinson, 2 Camp., 63; Moody vs. Thurston, 1 Strange, 481; Bateman vs. Willoe, 1 Sch. & Sef., 201; Fischli vs. Fischli, 1 Blackf., 361, and many others referred to in the above case from 1 Johns. Cases.

It would seem that this principle should be conclusive of the case under consideration.

EWING, HILL & BROWNING,
for Defendant in Error.

GIDEON & PEARSON, Printers.

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IN THE

Supreme Court of the United States,

No. 227.

CHARLES G. MILLER,
Plaintiff in Error,
v.
JAMESON C. SHERRY,
Defendant in Error.

Ejectment.

ARGUMENT OF H~~. T. HELM~~,

Of Counsel for Defendant in Error.

CHICAGO:
BEACH & BARNARD, PRINTERS, 14 SOUTH CLARK ST.
1864.

IN THE

SUPREME COURT OF THE UNITED STATES.

CHARLES G. MILLER, PLAINTIFF IN ERROR,

vs.

JAMESON C. SHERRY, DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, FOR THE NORTHERN DISTRICT OF ILLINOIS.

ARGUMENT FOR DEFENDANT IN ERROR.

STATEMENT OF THE CASE.

The title of the plaintiff below was derived in the following manner:

(The references are to the side numbers, or pages of the Record).

On the the 6th day of April, 1857, the defendant below, Miller, being then the owner of the premises, conveyed the same,
21–22 by warranty deed, to Robert S. Williams, who was son-in-law of Miller, and resided in Pittsburg, in the State of Pennsylvania.

Miller was at this time indebted in a large amount of
21 money, and greatly embarrassed.

At the October term, 1858, of the Circuit Court of the
17 United States, Northern District of Illinois, Wm. H. Lyon

et al. recovered a judgment against Miller for a large sum of
18 money, on which an execution was issued, and afterwards returned unsatisfied, for want of property.

15 February 15, 1859, Lyon et al. filed a bill in chancery in
16 the Circuit Court of the county of LaSalle, State of Illinois, where the premises were situated, against Charles G. Miller, defendant below, Eliza Miller, his wife, Robert S. Williams, and others, setting up, among other things, the recovery of the aforesaid judgment and return of execution, describing the premises particularly, and alleging that the conveyance to Williams,
22 of April 6, 1857, was fraudulent as against complainants, who, at said time, were creditors of Miller.

The defendants, Miller, his wife, and Williams, were served
32 with process. Miller and Williams appeared and answered the bill, denying the fraud and alleging that the conveyance was made in good faith, for valuable consideration.

The suit resulted in a decree in favor of complainants,
61 Lyon et al., and under that decree the property was sold by the Master in Chancery of LaSalle county, and under that
66to76 sale, Sherry, the defendant below, derived his title, on which he brought ejectment against Miller, defendant in the suit in chancery.

DEFENSE.

The defense was, mainly, that of paramount title in James M. Benedict, derived as follows:

That on the 26th day of April, 1858, E. S. Mills *et al.*
81 filed a creditor's bill in chancery in the Circuit Court of the United States, for the Northern District of Illinois, against Charles G. Miller and William C. Richardson.

By the record of that suit it appears that the defendants,
104 Miller and Richardson, appeared in that suit, but never answered.

That no steps were taken in the suit until the 3d day of
103 June, 1858, when leave was given to the complainants to examine Miller orally before the Master.

That on the 13th day of July, 1858, he was so examined
105 before the Master.

That no further steps were taken in said suit until De-
114 cember 27th, 1860, when the bill was amended and Robert S. Williams was made a party; that Williams was never served with process, and never appeared in the case.

That no further steps were taken in said suit until July
119 13th, 1861, when the bill as against Robert S. Williams was dismissed, and an order made that the defendants, Miller and Richardson, convey to Moulton, as Receiver, all the property and effects of Charles G. Miller by them held.

That on the 26th day of July, 1861, Miller executed to
123 Moulton a deed conveying the premises in controversy, but describing nothing else.

That Moulton, as Receiver, sold the same to Benedict;
127 and this is the adverse title paramount, on which the defendant below relies.

REMARKS.

Four features of this title are worthy of remark:

1. That the bill of Mills et. al. did not relate to this prop-
90 erty; that it sought to reach a transaction in merchandize between Miller and Richardson.

2. That from the examination of Miller, on the 3d of June, 1858, until December, 27th, 1860, and after the title of Sherry had been acquired by the Master's sale in LaSalle county, no steps whatever were taken in this case.

3. That no decree was ever taken against Miller and Williams, annulling the conveyance to Williams, or any testimony even tending to impeach that conveyance—as against Mills et. al.—but Williams not being served with process, the bill was dismissed
122 as to him.

4. The order appointing Moulton Receiver, and requiring
119 Miller to convey his property, was made July 13th, 1861, after the institution of the action of ejectment by Sherry against Miller for the recovery of the premises.

It will be seen that the title of the defendant in error was
61 obtained under a decree of the LaSalle Circuit Court, to
which the plaintiff in error was a party; that the premises
65 were sold in pursuance of that decree, and that in the de-
cree it was provided that "said sale, so to be made, shall
63 "bar and divest all and all manner of interest or right or
"equity, or right of redemption which the said Charles G.
"Miller, or any of the said defendants, may have in or to said
"property, or any part thereof."

As against Miller, this title must be conclusive, unless some better title in some other party be interposed; but it is claimed that the title offered in evidence by the defense is such better title.

It is submitted, as a proposition that can hardly escape observation, that this latter title is no title whatever; that it is no title even as against a stranger in possession of the premises. The bill filed by Mills, et. al., was a general creditor's bill, in chancery—setting forth nothing in particular, except a sale of merchandize by Miller to Richardson. Nothing was said in the bill, in relation to real
estate, except the printed form, that Miller was, "in some
87 "way or manner beneficially interested in some real estate,
"in this or some other State or Territory."

No answer was filed to this bill, and no testimony was ever taken, beyond the oral examination of Miller, upon and by which, it is claimed, they discovered Miller's interest in this property. All that Miller said in reference to this property was as follows: "I
"hadn't any real estate at that time. Yes; I held real es-
108 "tate at the time I sold my goods. I had a farm—280
"acres—near Ottawa, worth forty dollars an acre. It
"wouldn't have brought that, cash—$30.00 I guess. That is all
"the real estate I had then. I sold lots 8, 9, 13 and 14, in block
"79, in States' addition to Ottawa, subject to incumbrances. I got
"about $2,400 for it over and above incumbrances. I used the
"money in my business; that's what I sold it for. Williams is
"my son-in-law. The amount of incumbrances on it was $1,125
"(error, $9,125 in printing), and interest for one year at 20

109 " per cent. to J. W. Joycox, of New York, a stranger to me.
" I borrowed the money of his attorney, or agent, John P.
" Anthony. That property was worth about that amount, not any
" more. I got the equivalent of cash for it. My residence was on
" the property; my house cost me $1,400. The lots cost me $500.
" I bought the lots as much as six or seven years ago."

This is the only reference to the premises in controversy to be found in the entire case. No other proof was taken, and no furthre
114 step was made in the case until the 27th day of December, 1860, when an amendment was made to the bill, which was
119 afterwards abandoned, and, on the 13th of July, 1861, after Sherry had obtained his title, and brought this suit in ejectment, order was entered, requiring Miller to convey to Moulton, as receiver, all of his lands, tenements, goods, chattels, property and effects, and, in pursurance of which, Miller did execute, to Moulton, a quit claim of these premises—nothing else.

It is here worthy of remark, that ne other decree was ever entered in the case. The conveyance to Williams, of April 6th, 1857, was not annulled, or declared to be fraudulent, as against Mills et al., or void, nor was it ever attempted to vacate that conveyance.

Miller simply conveyed to Moulton the interest which he, Miller, then had in the property, and Moulton conveyed the same to Benedict; and this is the *superior adverse* title which is interposed against the title of Sherry, derived under the decree of the Lasalle Circuit Court.

What sort of title passed from Miller to Moulton? Miller had, long before the filing of the Mills et al's bill, or the rendition of the judgment on which the same was founded, conveyed the property to Williams by warrantee deed, and there was no decree, in this case, annulling that deed, or declaring it void, as against Mills et al. But, it has been claimed, that the decree in the case of Lyon et al., in the Lasalle Circuit Court, established that fact for Mills et al. This is by no means correct, for the decree, in that case, simply declares the conveyance fraudulent and
62 void, as against Lyon et al.

Mills et al., were not parties to the bill, and that it was

63 void as against them, was not a question in the case, and, consequently, could not be established.

Hence, it is submitted, that the title derived under the decree in the Mills et al. case, was *no title whatever;* it was simply Miller's title, and he showed, in his examination, that he had long before parted with all of his title, and there was not a word in the bill, or the proofs, or the entire record, showing anything different, unless it be the amendment filed to their bill, December 28th, 1860, after the title of Sherry had been acquired.

This disposes of the claim, made by the plaintiff in error or the other creditors, who claim the property, that the interest of Miller, in this property, was discovered by their bill, and that they were the creditors whose superior diligence should be rewarded.

It will hardly escape the observation of the court, that this property, as the property of Miller, was not discovered by the counsel for Mills et al., until they were retained to defend him in the ejectment suit, brought by Sherry, for the possession of the premises.

Another branch of the case now deserves notice.

It is claimed that the mere filing of the bill, in the case of Mills et al., gave such a lien upon the lands and secret equities of Miller as to prevent any other creditor from acquiring title to the same.

Let us examine the bill. It was a general creditor's bill,
81 very loose, and a printed form; the only particular fact set
90 forth was a sale of merchandise by Miller to Richardson, the other defendant, which was alleged to have been fraudulent. No other persons were defendants to the bill.

No receiver was appointed in the case until the order of
120 July 13th, 1861, after the title of Sherry was acquired and this ejectment was instituted. To this fact we call particular attention.

The pleadings, in that case, contained no reference to the premises in controvery in this suit.

It was simply pending at the time of filing the bill of Lyon et al. vs. Miller et al., in the Lasalle Circuit Court.

The legal title to the premises was in Robert S. Williams, a citizen and resident of the State of Pennsylvania; hence without service of process in the Northern District of Illinois, the court in which the bill of Mills et al. was pending, could have no jurisdiction to divert that title, and pass the same to a receiver in that case.

No effort was made to make Williams a party until after the title of Sherry had been acquired, and this was abondoned, when the order appointing a receiver was made. He never was brought into court, and never appeared in the case.

A few legal propositions will dispose of all that remains to be considered in the case.

1. Pending a creditor's bill, in chancery, any other judgment creditor has the right to levy upon and sell the property, real or personal, of the defendant in the creditor's suit, at any time before the order for the appointment of a receiver, or the sequestration of the property of the debtor, notwithstanding the ordinary injunction issued in such cases:

Lansing vs. *Easton*, 7 Paige, 364;
1 Barb. Ch. Prac., 663;
Storm vs. *Waddell*, 2 Sandf. Ch. Rep., 516;
Storm vs. *Badger*, 8 Paige, 130;
Angel vs. *Smith*, 9 Vesey, jr., 336.

3. It is claimed that the filing of their creditor's bill gave Mills et al. a general lien upon all of Miller's property. The above proposition does not deny this. But it was a lien of that class which is often subrogated or postponed to one subsequently acquired, as in the instance stated iu the above proposition. In such case the subsequent lien prevails, and carries with it the title to the property as against the lien of the creditors suit.

Thus, also, in case of a lien by judgment in the Federal court, when on a junior judgment obtaining in the State court, and a creditors bill filed in the State court in which a receiver was appointed, who sold the property pursuant to a decree of that court,

it was held by this court, that this junior lien must prevail on account of the first seizure of the property in appointing a receiver, and thus drawing to the custody of the State court the possession of the property.

Wiswell vs. *Sampson*, 14 How., 52.

It is exceedingly difficult to distinguish that case from the case at bar. The judgment lein of the Federal court was prior, but the State court, by the appointment of a receiver, drew to itself the custody of the property, and a sale on execution from the Federal court, after the appointment of such receiver, but pending the creditors' suit in the State court, was held by this court to be invalid.

14 How., 52.

It is submitted, in like manner, that the decree of the LaSalle Circuit Court, directing the Master in Chancery to sell the property and execute a conveyance, was, in all respects, equivalent to the appointment of a receiver or the sequestration of the property.

3. In like manner, in case of co-ordinate liens of process from both State and Federal courts, the first seizure is held to prevail, as in case of executions in the hands respectively of the marshal and a sheriff, the first levy and seizure of the property, although it be under the junior writ, shall prevail.

Pulliam vs. *Orborne*, 17 How., 471, and cases thereicited.

10 Peters, 400. 4 How., 4. 8 How., 107.

Many cases were cited by the plaintiff in error, in the court below, in support of his title, all sustaining the proposition last stated. Those cases, while they declare the general rules as to the priority of lien, contended for by the plaintiff in error, also declare the exceptions to, and the qualifications and limitations of, those general rules, under which ample support is found for the title of the defendant in error.

And the same observation may be made concerning the cases cited in support of the nature and extent of *Lis pendens*, for counsel fails to note certain important qualifications of the rule, as for example:

Lis pendens is notice of every fact contained in the pleadings which is pertinent to the issue, and of the contents of exhibits to the bill.

Center vs. *P. & M. Bank*, 22 Ala., 743.

2. The principle of *Lis pendens* is that the specific property must be so pointed out by the procedings as to warn the whole world that they meddle with it at their peril.

Lewis vs. *Mew*, 1 Strobh Eq. R., 180.

There must be something in the pleadings to point to the identical property as the property in litigation (ib).

3. The notice is notice of what the bill contains, and nothing more.

Griffith vs. *Griffith*, 1 Hoff. Ch. R., 153.

4. The bill must refer to the land with sufficient certainty to put a purchaser upon inquiry.

Price vs. *White*, Bail Eq., 244.

The remaining ground of defense, that this property was the homestead of the defendant below, and has not legally been divested, only requires the suggestion that both Miller and his wife were parties to the suit in the LaSalle Circuit Court. In his answer to this suit, Miller denied having any claim to, or interest in, the property. He declared that he had sold it and received a full consideration for it. He renounced all claim to it, and by the terms of the decree in that case—the court having full and complete jurisdiction of the case and of the parties—a sale of the property was ordered, and it was decreed that such sale should absolutely divest all right and title of all of the defendants therein to said property.

That decree remains unreversed, and its validity and complete force cannot be questioned in this place.

An objection to the title of the defendant in error may be raised in this court, which was not made in the court below, viz: that the sale of the premises in controversy, by the Master in Chancery of the LaSalle Circuit Court, was not confirmed by the court
65 until after the institution of this action of ejectment. Such, indeed, is the fact, but the answer to the objection is found in the case of *Fuller* vs. *Van Geesen*, 4 Hill, 171, which was an action of ejectment brought under similar circumstances.

The opinion of the court was given by COWAN, J.:

"The Master's sale passed the title presently; and the objection "that this suit was prematurely brought cannot avail. In England "it would have been otherwise, because the deed is there withheld "till the final order, confirming the sale, be made absolute; but "all their cases declare the law as it is now claimed to be by the "plaintiff's counsel, viz: that the title vests at the date of the "conveyance. (Hoffman, Master, 220, 222; *Exparte* Manning, 2 "P. Williams, 410; *Blount* vs. *Blount*, 2 Atk. 637.) In *Exparte* "Minor, (11 Vesey 559,) mainly relied on by the counsel for the "defendant, the difference of practice as to time of giving the deed "appears. The Lord Chancellor says: 'though confirmed as the "best purchaser, *if he had not got the conveyance* he would have "been entitled to say the estate was not his." Indeed, I suspect "this is the first time it was ever contended that a regular deed in "fee would not pass the title at the time of its delivery. Besides, "if it were possible to doubt of such a proposition, all question "would be removed by the doctrine of relation. The sale and "deed being afterwards confirmed, by an order, this related to the "date of the deed; thus overreaching the claim of a mere intruder "into the premises." In support of which last proposition the court here cites numerous cases.

And such will be recognized as a very common practice in the State courts in Illinois, although it would be different in the Federal courts, governed, as they are, by the practice of the English Court of Chancery. In the courts of the State of Illinois, the court will bear in mind, that, in many cases, it is not the practice to require confirmation of chancery sales, the decree so providing.

And, by the terms of the decree in this case, the Master was directed to make sale of the premises and execute deed to the purchaser.

It can hardly be claimed that, by the terms of the decree in this case, the Master was required to report the sale for confirmation.

But if it were, if can hardly be doubted that the title passed by conveyance.

This, it is confidently believed, disposes of all the questions arising in this case. All of which is most respectfully submitted.

~~H. T. HELM~~.

O. H. Browning